

CHAPTER 722. CHILDREN

STATUS OF MINORS AND CHILD SUPPORT

Act 293 of 1968

AN ACT to establish the status of minors; to define the rights and duties of parents; to establish rights and duties to provide support for a child after the child reaches the age of majority under certain circumstances; and to establish the conditions for emancipation of minors.

History: 1968, Act 293, Eff. Nov. 15, 1968;—Am. 1990, Act 238, Imd. Eff. Oct. 10, 1990.

Popular name: Emancipation of Minors Act

The People of the State of Michigan enact:

722.1 Definitions.

Sec. 1. As used in this act:

- (a) "Minor" means a person under the age of 18 years.
- (b) "Parents" means natural parents, if married prior or subsequent to the minor's birth; adopting parents, if the minor has been legally adopted; or the mother, if the minor is illegitimate.
- (c) "Emancipation" means termination of the rights of the parents to the custody, control, services and earnings of a minor.

History: 1968, Act 293, Eff. Nov. 15, 1968;—Am. 1972, Act 16, Imd. Eff. Feb. 19, 1972.

Popular name: Emancipation of Minors Act

722.2 Unemancipated minors; parental rights.

Sec. 2. Unless otherwise ordered by a court order, the parents of an unemancipated minor are equally entitled to the custody, control, services and earnings of the minor, but if 1 parent provides, to the exclusion of the other parent, for the maintenance and support of the minor, that parent has the paramount right to control the services and earnings of the minor.

History: 1968, Act 293, Eff. Nov. 15, 1968.

Popular name: Emancipation of Minors Act

722.3 Obligation of parents; exceptions; enforcement of duty to support; child support formula as guideline; enforcement of judgment.

Sec. 3. (1) The parents are jointly and severally obligated to support a minor as prescribed in section 5 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605, unless a court of competent jurisdiction modifies or terminates the obligation or the minor is emancipated by operation of law, except as otherwise ordered by a court of competent jurisdiction. Subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, a court of competent jurisdiction may order support as provided in this section for a child after he or she reaches 18 years of age.

(2) The duty of support may be enforced by the minor or the child who has reached 18 years of age, his or her guardian, any relative within the third degree, an authorized government agency, or if the minor or the child who has reached 18 years of age is being supported in whole or in part by public assistance under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, by the director of the family independence agency or his or her designated representative, or by the director of the county family independence agency or his or her designated representative of the county where an action under this act is brought. An action for enforcement shall be brought in the circuit court in the county where the minor or the child who has reached 18 years of age resides. If a designated official of either the state or a county family independence agency brings an action under this act on behalf of the minor or the child who has reached 18 years of age, then the prosecuting attorney or an attorney employed by the county under section 1 of 1941 PA 15, MCL 49.71, shall represent the official in initiating and conducting the proceedings under this act. The prosecuting attorney shall utilize the child support formula developed under section 19 of the friend of the court act, 1982 PA 294, MCL 552.519, as a guideline in petitioning for child support.

(3) A judgment entered under this section providing for support is governed by and is enforceable as provided in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650. If this act contains a specific provision regarding the contents or enforcement of a support order that conflicts with a provision in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650, this act controls in regard to that provision.

History: 1968, Act 293, Eff. Nov. 15, 1968;—Am. 1971, Act 173, Imd. Eff. Dec. 2, 1971;—Am. 1985, Act 213, Eff. Mar. 1, 1986;—Am. 1989, Act 278, Imd. Eff. Dec. 26, 1989;—Am. 1990, Act 238, Imd. Eff. Oct. 10, 1990;—Am. 1990, Act 295, Imd. Eff. Dec. 14, 1990;—Am. 1996, Act 17, Eff. June 1, 1996;—Am. 2001, Act 110, Eff. Sept. 30, 2001.

Popular name: Emancipation of Minors Act

722.3a Repealed. 2001, Act 110, Eff. Sept. 30, 2001.

Compiler's note: The repealed section pertained to child support after child reaches 18 years of age.

Popular name: Emancipation of Minors Act

722.4 Emancipation by operation of law or pursuant to petition filed by minor with family division of circuit court.

Sec. 4. (1) Emancipation may occur by operation of law or pursuant to a petition filed by a minor with the family division of circuit court as provided in this act.

(2) An emancipation occurs by operation of law under any of the following circumstances:

(a) When a minor is validly married.

(b) When a person reaches the age of 18 years.

(c) During the period when the minor is on active duty with the armed forces of the United States.

(d) For the purposes of consenting to routine, nonsurgical medical care or emergency medical treatment to a minor, when the minor is in the custody of a law enforcement agency and the minor's parent or guardian cannot be promptly located. The minor or the minor's parent shall remain responsible for the cost of any medical care or treatment rendered pursuant to this subdivision. An emancipation pursuant to this subdivision shall end upon the termination of medical care or treatment or upon the minor's release from custody, whichever occurs first.

(e) For the purposes of consenting to his or her own preventive health care or medical care including surgery, dental care, or mental health care, except vasectomies or any procedure related to reproduction, during the period when the minor is a prisoner committed to the jurisdiction of the department of corrections and is housed in a state correctional facility operated by the department of corrections or in a youth correctional facility operated by the department of corrections or a private vendor under section 20g of 1953 PA 232, MCL 791.220g; or the period when the minor is a probationer residing in a special alternative incarceration unit established under the special alternative incarceration act, 1988 PA 287, MCL 798.11 to 798.18. This subdivision applies only if a parent or guardian of the minor cannot promptly be located by the department of corrections or, in the case of a youth correctional facility operated by a private vendor, by the responsible official of the youth correctional facility.

(3) An emancipation occurs by court order pursuant to a petition filed by a minor with the family division of circuit court as provided in sections 4a to 4e.

History: 1968, Act 293, Eff. Nov. 15, 1968;—Am. 1972, Act 16, Imd. Eff. Feb. 19, 1972;—Am. 1986, Act 164, Imd. Eff. July 7, 1986;—Am. 1988, Act 403, Eff. Mar. 30, 1989;—Am. 1993, Act 257, Eff. Apr. 1, 1994;—Am. 1996, Act 412, Eff. Jan. 1, 1998;—Am. 1998, Act 509, Imd. Eff. Jan. 8, 1999.

Popular name: Emancipation of Minors Act

722.4a Petition; filing; signature; verification; contents; affidavit; service on parents or guardian; notice of hearing.

Sec. 4a. (1) A minor seeking emancipation shall file a petition for emancipation in the family division of circuit court in the county where the minor resides. The petition shall be signed and verified by the minor, and shall include all of the following information:

(a) The minor's full name and birth date, and the county and state where the minor was born.

(b) A certified copy of the minor's birth certificate.

(c) The name and last known address of the minor's parents, guardian, or custodian.

(d) The minor's present address, and length of residency at that address.

(e) A declaration by the minor indicating that he or she has demonstrated the ability to manage his or her financial affairs. The minor may include any information he or she considers necessary to support the declaration.

(f) A declaration by the minor indicating that he or she has the ability to manage his or her personal and social affairs. The minor may include in this section any information he or she considers necessary to support the declaration.

(2) The petition shall include an affidavit by any of the following individuals declaring that the individual has personal knowledge of the minor's circumstances and believes that under those circumstances emancipation is in the best interests of the minor:

- (a) Physician.
- (b) Nurse.
- (c) Member of the clergy.
- (d) Psychologist.
- (e) Family therapist.
- (f) Certified social worker.
- (g) Social worker.
- (h) Social work technician.
- (i) School administrator.
- (j) School counselor.
- (k) Teacher.
- (l) Law enforcement officer.
- (m) Duly regulated child care provider.

(3) A copy of the petition and a summons to appear at the hearing shall be served on the minor's parents or guardian. A notice of hearing shall be sent to the individual who provided the affidavit required under subsection (2).

History: Add. 1988, Act 403, Eff. Mar. 30, 1989;—Am. 1996, Act 412, Eff. Jan. 1, 1998.

Popular name: Emancipation of Minors Act

722.4b Powers of court.

Sec. 4b. After a petition is filed, the court may do 1 or more of the following:

- (a) Assign an employee of the court to investigate the allegations of the petition and to file a report containing the results of the investigation with the court.
- (b) Appoint legal counsel for the minor.
- (c) Appoint legal counsel for the minor's parents or guardian if they are indigent and if they oppose the petition.
- (d) Dismiss the petition if the minor's custodial parent does not consent and is providing support.

History: Add. 1988, Act 403, Eff. Mar. 30, 1989.

Popular name: Emancipation of Minors Act

722.4c Hearing; issuance of emancipation order; burden of proof; retaining copy of order; emancipation obtained by fraud voidable; appeal.

Sec. 4c. (1) The hearing shall be before a judge or referee sitting without a jury. If the minor requests that the hearing be before a judge, the hearing shall be before a judge and not before a referee.

(2) The court shall issue an emancipation order if it determines that emancipation is in the best interest of the minor and the minor establishes all of the following:

- (a) That the minor's parent or guardian does not object to the petition; or if a parent or guardian objects to the petition, that the objecting parent or guardian is not providing the minor with support.
- (b) That the minor is at least 16 years of age.
- (c) That the minor is a resident of the state.

(d) That the minor has demonstrated the ability to manage his or her financial affairs, including proof of employment or other means of support. "Other means of support" does not include general assistance or aid to families with dependent children administered under the social welfare act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.121 of the Michigan Compiled Laws.

(e) That the minor has the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing.

(f) That the minor understands his or her rights and responsibilities under this act as an emancipated minor.

(3) A minor who petitions the court for emancipation shall have the burden of showing by a preponderance of evidence that emancipation should be ordered.

(4) If the court issues an emancipation order, the court shall retain a copy of the order until the emancipated minor becomes 25 years of age.

(5) An emancipation obtained by fraud is voidable. Voiding such an order does not affect an obligation, responsibility, right, or interest that arose during the period of time the order was in effect.

(6) The minor or a parent or guardian of the minor may file an appeal from the court's grant or denial of an emancipation petition. The appeal shall be filed in the court of appeals.

History: Add. 1988, Act 403, Eff. Mar. 30, 1989.

Popular name: Emancipation of Minors Act

722.4d Petition for rescission; service of copy and summons; determinations; order; effect of rescission on obligations, rights, or interests; appeal.

Sec. 4d. (1) A parent of a minor emancipated by court order or a minor emancipated by court order may petition the family division of circuit court that issued the order to rescind the order. If the order of emancipation is entered by the probate court before January 1, 1998, the parent or minor may petition the family division of the circuit court in the county in which the order was entered to rescind the order.

(2) A copy of the petition for rescission and a summons shall be served on the minor or the minor's parents.

(3) The court shall grant the petition and rescind the order of emancipation if it determines 1 or more of the following:

(a) That the minor is indigent and has no means of support.

(b) That the minor and the minor's parents agree that the order should be rescinded.

(c) That there is a resumption of family relations inconsistent with the existing emancipation order.

(4) If a petition for rescission is granted, the court shall issue an order rescinding the emancipation order and retain a copy of the order until the minor becomes 25 years of age.

(5) Rescission of an emancipation order does not alter any contractual obligations or rights or any property rights or interests that arose during the period of time that the emancipation order was in effect.

(6) The minor or a parent of the minor may file an appeal from the court's grant or denial of a petition for rescission of an emancipation order. The appeal shall be filed in the court of appeals.

History: Add. 1988, Act 403, Eff. Mar. 30, 1989;—Am. 1996, Act 412, Eff. Jan. 1, 1998.

Popular name: Emancipation of Minors Act

722.4e Rights and responsibilities of emancipated minor; obligation and liability of parents.

Sec. 4e. (1) A minor emancipated by operation of law or by court order shall be considered to have the rights and responsibilities of an adult, except for those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, and other health and safety regulations relevant to him or her because of his or her age. A minor shall be considered emancipated for the purposes of, but not limited to, all of the following:

(a) The right to enter into enforceable contracts, including apartment leases.

(b) The right to sue or be sued in his or her own name.

(c) The right to retain his or her own earnings.

(d) The right to establish a separate domicile.

(e) The right to act autonomously, and with the rights and responsibilities of an adult, in all business relationships, including, but not limited to, property transactions and obtaining accounts for utilities, except for those estate or property matters that the court determines may require a conservator or guardian ad litem.

(f) The right to earn a living, subject only to the health and safety regulations designed to protect those under the age of majority regardless of their legal status.

(g) The right to authorize his or her own preventive health care, medical care, dental care, and mental health care, without parental knowledge or liability.

(h) The right to apply for a driver's license or other state licenses for which he or she might be eligible.

(i) The right to register for school.

(j) The right to marry.

(k) The right to apply to the medical assistance program administered under the social welfare act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.121 of the Michigan Compiled Laws, if needed.

(l) The right to apply for other welfare assistance, including general assistance and aid to families with dependent children administered under Act No. 280 of the Public Acts of 1939, if needed.

(m) The right, if a parent, to make decisions and give authority in caring for his or her own minor child.

(n) The right to make a will.

(2) The parents of a minor emancipated by court order are jointly and severally obligated to support the minor. However, the parents of a minor emancipated by court order are not liable for any debts incurred by the minor during the period of emancipation.

History: Add. 1988, Act 403, Eff. Mar. 30, 1989.

Popular name: Emancipation of Minors Act

722.5 Earnings of unemancipated minor.

Sec. 5. The earnings of an employed unemancipated minor may be paid directly to him unless his parents or his guardian give notice to the employer that future payments should be made to the parents or guardian.

History: 1968, Act 293, Eff. Nov. 15, 1968.

Popular name: Emancipation of Minors Act

722.6 Obligation to support not affected.

Sec. 6. This act does not affect obligations of support imposed under other laws of this state.

History: 1968, Act 293, Eff. Nov. 15, 1968.

Popular name: Emancipation of Minors Act

MCGRUFF HOUSE PROGRAM AND MICHIGAN COMMUNITY CHILD WATCH PROGRAM

Act 32 of 1989

AN ACT to establish the McGruff house program and the Michigan community child watch program; to prescribe the powers and duties of the department of state police and certain other agencies and organizations; and to prescribe penalties.

History: 1989, Act 32, Imd. Eff. May 26, 1989;—Am. 1991, Act 127, Imd. Eff. Oct. 18, 1991.

The People of the State of Michigan enact:

722.11 Definitions.

Sec. 1. As used in this act:

(a) “McGruff house” or “Michigan community child watch house” means a house, designated by a sign bearing the standard McGruff house symbol or standard Michigan community child watch symbol, as applicable, occupied by a responsible adult, where a child may seek help when he or she faces an emergency such as being bullied, followed, threatened, or hurt while walking or playing in the neighborhood.

(b) “Program”, except as used in subdivision (c), means the McGruff house program or Michigan community child watch program.

(c) “Standard McGruff house symbol” or “standard Michigan community child watch symbol” means the standard symbol to designate a McGruff house or Michigan community child watch house, adopted pursuant to section 2(1)(b), except that until May 27, 1991, the standard McGruff house symbol or standard Michigan community child watch symbol may include a symbol that before and on May 26, 1989 was used by a neighborhood safe house program to designate a neighborhood safe house similar to a McGruff house or Michigan community child watch house within that program.

History: 1989, Act 32, Imd. Eff. May 26, 1989;—Am. 1991, Act 127, Imd. Eff. Oct. 18, 1991.

722.12 Duties of department of state police; cooperation of certain associations.

Sec. 2. (1) The department of state police, in cooperation with the Michigan sheriffs' association, the Michigan association of chiefs of police, the crime prevention association of Michigan, and the child watch association shall do all of the following:

(a) Develop guidelines for the establishment and operation of McGruff house and Michigan community child watch programs.

(b) Adopt standard symbols and signs for the McGruff house programs and Michigan community child watch programs as statewide symbols for the programs. The local sponsor may choose either program. The signs for both programs shall be numbered and made available at cost to local law enforcement agencies sponsoring or cooperating with a sponsor of the selected program.

(c) Develop or adopt a model application form for designation of a home as a McGruff house or Michigan community child watch house.

(d) Make information available to nonprofit organizations, school districts, business entities, and local law enforcement agencies concerning the program.

(e) Publicize the program in as many ways as is reasonably practical.

(f) Cooperate with local law enforcement agencies in conducting background checks on persons who apply to have their homes designated as McGruff houses or Michigan community child watch houses.

(2) The department of state police may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to implement this act.

History: 1989, Act 32, Imd. Eff. May 26, 1989;—Am. 1991, Act 127, Imd. Eff. Oct. 18, 1991.

722.13 Sponsorship of program; conditions to receiving numbered sign bearing symbol; register; background check.

Sec. 3. (1) A local law enforcement agency, or a school district, nonprofit organization, or business entity in cooperation with a local law enforcement agency, may sponsor a program.

(2) A program sponsor shall supply a numbered sign bearing the standard McGruff house symbol or standard Michigan community child watch symbol to a person in the community who applies for designation of his or her home as a McGruff house or Michigan community child watch house, if the person agrees in writing to follow the terms of the program and if the person and any other adult residing in the person's home passes a background check conducted by a local law enforcement agency.

(3) A program sponsor shall keep a register of the McGruff houses and Michigan community child watch

houses within the program.

(4) A local law enforcement agency that sponsors a program or agrees to cooperate with a nonprofit organization, school district, or business entity that sponsors a program shall conduct a background check, including a criminal history check, on each person who applies to have his or her home designated as a McGruff house or Michigan community child watch house and on each adult residing in the person's home.

History: 1989, Act 32, Imd. Eff. May 26, 1989;—Am. 1991, Act 127, Imd. Eff. Oct. 18, 1991.

722.14 McGruff house/Michigan community child watch house signs; condition to display; sign as property of local law enforcement agency; return of sign; violation as misdemeanor.

Sec. 4. (1) A person shall not display a sign bearing the standard McGruff house symbol or standard Michigan community child watch symbol so that the sign is visible from the outside of the person's house unless the person's home has been approved as a McGruff house or Michigan community child watch house by a program sponsor.

(2) The McGruff house and Michigan community child watch house signs are the property of the local law enforcement agency that sponsors or cooperates with the sponsor of the program that issued the sign. If the sponsor determines that a person's home no longer qualifies as a McGruff house and Michigan community child watch house, the person shall return the sign to the local law enforcement agency.

(3) A person who violates this section is guilty of a misdemeanor.

History: 1989, Act 32, Imd. Eff. May 26, 1989;—Am. 1991, Act 127, Imd. Eff. Oct. 18, 1991.

CHILD CUSTODY ACT OF 1970
Act 91 of 1970

AN ACT to declare the inherent rights of minor children; to establish rights and duties to their custody, support, and parenting time in disputed actions; to establish rights and duties to provide support for a child after the child reaches the age of majority under certain circumstances; to provide for certain procedure and appeals; and to repeal certain acts and parts of acts.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1990, Act 245, Imd. Eff. Oct. 10, 1990;—Am. 1996, Act 19, Eff. June 1, 1996.

The People of the State of Michigan enact:

722.21 Child custody act; short title.

Sec. 1. This act shall be known and may be cited as the “child custody act of 1970”.

History: 1970, Act 91, Eff. Apr. 1, 1971.

722.22 Definitions.

Sec. 2. As used in this act:

(a) "Active military duty" means when a reserve unit member or national guard unit member is called into active military duty.

(b) "Agency" means a legally authorized public or private organization, or governmental unit or official, whether of this state or of another state or country, concerned in the welfare of minor children, including a licensed child placement agency.

(c) "Attorney" means, if appointed to represent a child under this act, an attorney serving as the child's legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney defined under this subdivision owes the same duties of undivided loyalty, confidentiality, and zealous representation of the child's expressed wishes as the attorney would to an adult client.

(d) "Child" means minor child and children. Subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, for purposes of providing support, child includes a child and children who have reached 18 years of age.

(e) "Grandparent" means a natural or adoptive parent of a child's natural or adoptive parent.

(f) "Guardian ad litem" means an individual whom the court appoints to assist the court in determining the child's best interests. A guardian ad litem does not need to be an attorney.

(g) "Lawyer-guardian ad litem" means an attorney appointed under section 4. A lawyer-guardian ad litem represents the child, and has the powers and duties, as set forth in section 4.

(h) "Parent" means the natural or adoptive parent of a child.

(i) "State disbursement unit" or "SDU" means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.

(j) "Third person" means an individual other than a parent.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1990, Act 245, Imd. Eff. Oct. 10, 1990;—Am. 1998, Act 482, Eff. Mar. 1, 1999;—Am. 1999, Act 156, Imd. Eff. Nov. 3, 1999;—Am. 2002, Act 9, Imd. Eff. Feb. 14, 2002;—Am. 2004, Act 542, Imd. Eff. Jan. 3, 2005;—Am. 2005, Act 327, Imd. Eff. Dec. 28, 2005.

722.23 “Best interests of the child” defined.

Sec. 3. As used in this act, “best interests of the child” means the sum total of the following factors to be considered, evaluated, and determined by the court:

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1980, Act 434, Imd. Eff. Jan. 14, 1981;—Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993.

722.24 Child custody disputes; powers of court; appointment of lawyer-guardian ad litem.

Sec. 4. (1) In all actions involving dispute of a minor child's custody, the court shall declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time in accordance with this act.

(2) If, at any time in the proceeding, the court determines that the child's best interests are inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the child. A lawyer-guardian ad litem represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d. All provisions of section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under this act.

(3) In a proceeding in which a lawyer-guardian ad litem represents a child, he or she may file a written report and recommendation. The court may read the report and recommendation. The court shall not, however, admit the report and recommendation into evidence unless all parties stipulate the admission. The parties may make use of the report and recommendation for purposes of a settlement conference.

(4) After a determination of ability to pay, the court may assess all or part of the costs and reasonable fees of the lawyer-guardian ad litem against 1 or more of the parties involved in the proceedings or against the money allocated from marriage license fees for family counseling services under section 3 of 1887 PA 128, MCL 551.103. A lawyer-guardian ad litem appointed under this section shall not be paid a fee unless the court first receives and approves the fee.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1996, Act 19, Eff. June 1, 1996;—Am. 1998, Act 482, Eff. Mar. 1, 1999.

722.24a Repealed. 2001, Act 108, Eff. Sept. 30, 2001.

Compiler's note: The repealed section pertained to support of child after child reaches 18 years of age.

722.25 Child custody disputes; controlling interests, presumption; award of custody to parent convicted of criminal sexual conduct.

Sec. 5. (1) If a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control. If the child custody dispute is between the parent or parents and an agency or a third person, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence.

(2) Notwithstanding other provisions of this act, if a child custody dispute involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.520a to 750.520e and 750.520g of the Michigan Compiled Laws, the court shall not award custody to the convicted biological parent. This subsection does not apply to a conviction under section 520d(1)(a) of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.520d of the Michigan Compiled Laws. This subsection does not apply if, after the date of the conviction, the biological parents cohabit and establish a mutual custodial environment for the child.

(3) Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of Act No. 328 of the Public Acts of 1931 and the victim is the individual's child, the court shall not award custody of that child or a sibling of that child to that individual, unless both the child's other parent and, if the court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the custody.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993.

722.26 Liberal construction and application of act; purpose; provisions applicable to child custody disputes and actions; precedence of other actions; submission of action; habeas corpus or warrant.

Sec. 6. (1) This act is equitable in nature and shall be liberally construed and applied to establish promptly the rights of the child and the rights and duties of the parties involved. This act applies to all circuit court

child custody disputes and actions, whether original or incidental to other actions. Those disputes and actions shall have precedence for hearing and assignment for trial over other civil actions.

(2) Except as otherwise provided in section 6b or 6e, if the circuit court of this state does not have prior continuing jurisdiction over a child, the action shall be submitted to the circuit court of the county where the child resides or may be found by complaint or complaint and motion for order to show cause. An application for a writ of habeas corpus or for a warrant in its place to obtain custody of a child shall not be granted unless it appears that this act is inadequate and ineffective to resolve the particular child custody dispute.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1990, Act 315, Imd. Eff. Dec. 20, 1990;—Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993.

722.26a Joint custody.

Sec. 6a. (1) In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:

(a) The factors enumerated in section 3.

(b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.

(2) If the parents agree on joint custody, the court shall award joint custody unless the court determines on the record, based upon clear and convincing evidence, that joint custody is not in the best interests of the child.

(3) If the court awards joint custody, the court may include in its award a statement regarding when the child shall reside with each parent, or may provide that physical custody be shared by the parents in a manner to assure the child continuing contact with both parents.

(4) During the time a child resides with a parent, that parent shall decide all routine matters concerning the child.

(5) If there is a dispute regarding residency, the court shall state the basis for a residency award on the record or in writing.

(6) Joint custody shall not eliminate the responsibility for child support. Each parent shall be responsible for child support based on the needs of the child and the actual resources of each parent. If a parent would otherwise be unable to maintain adequate housing for the child and the other parent has sufficient resources, the court may order modified support payments for a portion of housing expenses even during a period when the child is not residing in the home of the parent receiving support. An order of joint custody, in and of itself, shall not constitute grounds for modifying a support order.

(7) As used in this section, "joint custody" means an order of the court in which 1 or both of the following is specified:

(a) That the child shall reside alternately for specific periods with each of the parents.

(b) That the parents shall share decision-making authority as to the important decisions affecting the welfare of the child.

History: Add. 1980, Act 434, Imd. Eff. Jan. 14, 1981.

722.26b Standing of guardian or limited guardian of child to bring action for custody of child; filing of action; stay of proceedings; continuation of order in force; copy of judgment or order of disposition; assignment of judge.

Sec. 6b. (1) Except as otherwise provided in subsection (2), a guardian or limited guardian of a child has standing to bring an action for custody of the child as provided in this act.

(2) A limited guardian of a child does not have standing to bring an action for custody of the child if the parent or parents of the child have substantially complied with a limited guardianship placement plan regarding the child entered into as required by section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, or section 424a of former 1978 PA 642.

(3) If the circuit court does not have prior continuing jurisdiction over the child, a child custody action brought by a guardian or limited guardian of the child shall be filed in the circuit court in the county in which the probate court appointed the guardian.

(4) Upon the filing of a child custody action brought by a child's guardian or limited guardian, guardianship proceedings concerning that child in the probate court are stayed until disposition of the child custody action. A probate court order concerning the guardianship of the child continues in force until superseded by a circuit court order. If the circuit court awards custody of the child, it shall send a copy of the

judgment or order of disposition to the probate court in the county that appointed the child's guardian or limited guardian.

(5) If a child's guardian or limited guardian brings a child custody action, the circuit court shall request the supreme court in accordance with section 225 of the revised judicature act of 1961, 1961 PA 236, MCL 600.225, to assign the probate court judge who appointed that guardian or limited guardian to serve as the circuit court judge and hear the child custody action.

History: Add. 1990, Act 315, Imd. Eff. Dec. 20, 1990;—Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993;—Am. 2000, Act 60, Eff. Apr. 1, 2000.

722.26c Custody action by third person; conditions.

Sec. 6c. (1) A third person may bring an action for custody of a child if the court finds either of the following:

(a) Both of the following:

(i) The child was placed for adoption with the third person under the adoption laws of this or another state, and the placement order is still in effect at the time the action is filed.

(ii) After the placement, the child has resided with the third person for a minimum of 6 months.

(b) All of the following:

(i) The child's biological parents have never been married to one another.

(ii) The child's parent who has custody of the child dies or is missing and the other parent has not been granted legal custody under court order.

(iii) The third person is related to the child within the fifth degree by marriage, blood, or adoption.

(2) A third person shall include with an action filed under this section both of the following:

(a) An affidavit setting forth facts relative to the existence of the prerequisites required by subsection (1)(a) or (b).

(b) Notice that a defense or objection to a third person's right to bring an action for custody may be raised as an affirmative defense or by a motion for summary disposition based on lack of standing as provided in the Michigan court rules.

History: Add. 1993, Act 259, Imd. Eff. Nov. 29, 1993.

Compiler's note: Section 2 of Act No. 259 of the Public Acts of 1993 provided:

“Sections 6c to 6e as added by this amendatory act are remedial in nature and apply retroactively.”

722.26d Custody action by third person; jurisdiction.

Sec. 6d. A third person filing an action under section 6c shall proceed as follows:

(a) If the circuit court has continuing jurisdiction over the child, the action shall be filed in the circuit court that has continuing jurisdiction over the child.

(b) If the circuit court does not have continuing jurisdiction over the child, the action shall be filed in the circuit court in the county where the child has resided for the 6 months immediately preceding the filing of the action or, if the child has not resided in any county for the 6 months immediately preceding the filing of the action, the action shall be filed in the circuit court in the county having the most significant connection with the child.

History: Add. 1993, Act 259, Imd. Eff. Nov. 29, 1993.

Compiler's note: Section 2 of Act No. 259 of the Public Acts of 1993 provided:

“Sections 6c to 6e as added by this amendatory act are remedial in nature and apply retroactively.”

722.26e Custody action by third person; notice; powers of court.

Sec. 6e. (1) A third person filing an action under section 6c shall send notice of the action to each party who has legal custody of the child and to each parent whose parental rights have not been terminated.

(2) In addition to other powers of the court, in an action under section 6c, the court may do any of the following:

(a) Appoint an attorney for a parent.

(b) Order that a necessary and reasonable amount of money be paid to the court for reimbursement of a party's attorney. A party may request an order under this subdivision. The moving party shall allege facts showing that the party is otherwise unable to bear the expense of the action. The court shall require the disclosure of attorney fees or other expenses paid.

(c) The court may award costs and fees as provided in section 2591 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.2591 of the Michigan Compiled Laws.

History: Add. 1993, Act 259, Imd. Eff. Nov. 29, 1993.

Compiler's note: Section 2 of Act No. 259 of the Public Acts of 1993 provided:

“Sections 6c to 6e as added by this amendatory act are remedial in nature and apply retroactively.”

722.27 Child custody disputes; powers of court; support order; enforcement of judgment or order.

Sec. 7. (1) If a child custody dispute has been submitted to the circuit court as an original action under this act or has arisen incidentally from another action in the circuit court or an order or judgment of the circuit court, for the best interests of the child the court may do 1 or more of the following:

(a) Award the custody of the child to 1 or more of the parties involved or to others and provide for payment of support for the child, until the child reaches 18 years of age. Subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, the court may also order support as provided in this section for a child after he or she reaches 18 years of age. The court may require that support payments shall be made through the friend of the court, court clerk, or state disbursement unit.

(b) Provide for reasonable parenting time of the child by the parties involved, by the maternal or paternal grandparents, or by others, by general or specific terms and conditions. Parenting time of the child by the parents is governed by section 7a.

(c) Modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age and, subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, until the child reaches 19 years and 6 months of age. The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. If a motion for change of custody is filed during the time a parent is in active military duty, the court shall not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child's placement that existed on the date the parent was called to active military duty, except the court may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's return from active military duty, the court shall reinstate the custody order in effect immediately preceding that period of active military duty. If a motion for change of custody is filed after a parent returns from active military duty, the court shall not consider a parent's absence due to that military duty in a best interest of the child determination.

(d) Utilize a guardian ad litem or the community resources in behavioral sciences and other professions in the investigation and study of custody disputes and consider their recommendations for the resolution of the disputes.

(e) Take any other action considered to be necessary in a particular child custody dispute.

(f) Upon petition consider the reasonable grandparenting time of maternal or paternal grandparents as provided in section 7b and, if denied, make a record of the denial.

(2) A judgment or order entered under this act providing for the support of a child is governed by and is enforceable as provided in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650. If this act contains a specific provision regarding the contents or enforcement of a support order that conflicts with a provision in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650, this act controls in regard to that provision.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1980, Act 161, Imd. Eff. June 18, 1980;—Am. 1985, Act 215, Eff. Mar. 1, 1986;—Am. 1988, Act 377, Eff. Mar. 30, 1989;—Am. 1989, Act 275, Imd. Eff. Dec. 26, 1989;—Am. 1990, Act 245, Imd. Eff. Oct. 10, 1990;—Am. 1990, Act 293, Imd. Eff. Dec. 14, 1990;—Am. 1996, Act 19, Eff. June 1, 1996;—Am. 1998, Act 482, Eff. Mar. 1, 1999;—Am. 1999, Act 156, Imd. Eff. Nov. 3, 1999;—Am. 2001, Act 108, Eff. Sept. 30, 2001;—Am. 2005, Act 328, Imd. Eff. Dec. 28, 2005.

722.27a Parenting time.

Sec. 7a. (1) Parenting time shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents. Except as otherwise provided in this section, parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time.

(2) If the parents of a child agree on parenting time terms, the court shall order the parenting time terms unless the court determines on the record by clear and convincing evidence that the parenting time terms are not in the best interests of the child.

(3) A child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health.

(4) Notwithstanding other provisions of this act, if a proceeding regarding parenting time involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.520a to 750.520e and 750.520g of the Michigan Compiled Laws, the court shall not grant parenting time to the convicted biological parent. This subsection does not apply to a conviction under section 520d(1)(a) of Act No. 328 of the Public Acts of 1931, being section 750.520d of the Michigan Compiled Laws. This subsection does not apply if, after the date of the conviction, the biological parents cohabit and establish a mutual custodial environment for the child.

(5) Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of Act No. 328 of the Public Acts of 1931 and the victim is the individual's child, the court shall not grant parenting time with that child or a sibling of that child to that individual, unless both the child's other parent and, if the court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the parenting time.

(6) The court may consider the following factors when determining the frequency, duration, and type of parenting time to be granted:

(a) The existence of any special circumstances or needs of the child.

(b) Whether the child is a nursing child less than 6 months of age, or less than 1 year of age if the child receives substantial nutrition through nursing.

(c) The reasonable likelihood of abuse or neglect of the child during parenting time.

(d) The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.

(e) The inconvenience to, and burdensome impact or effect on, the child of traveling for purposes of parenting time.

(f) Whether a parent can reasonably be expected to exercise parenting time in accordance with the court order.

(g) Whether a parent has frequently failed to exercise reasonable parenting time.

(h) The threatened or actual detention of the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody. A custodial parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the custodial parent's intent to retain or conceal the child from the other parent.

(i) Any other relevant factors.

(7) Parenting time shall be granted in specific terms if requested by either party at any time.

(8) A parenting time order may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of parenting time by a parent, including 1 or more of the following:

(a) Division of the responsibility to transport the child.

(b) Division of the cost of transporting the child.

(c) Restrictions on the presence of third persons during parenting time.

(d) Requirements that the child be ready for parenting time at a specific time.

(e) Requirements that the parent arrive for parenting time and return the child from parenting time at specific times.

(f) Requirements that parenting time occur in the presence of a third person or agency.

(g) Requirements that a party post a bond to assure compliance with a parenting time order.

(h) Requirements of reasonable notice when parenting time will not occur.

(i) Any other reasonable condition determined to be appropriate in the particular case.

(9) During the time a child is with a parent to whom parenting time has been awarded, that parent shall decide all routine matters concerning the child.

(10) Prior to entry of a temporary order, a parent may seek an ex parte interim order concerning parenting time. If the court enters an ex parte interim order concerning parenting time, the party on whose motion the ex parte interim order is entered shall have a true copy of the order served on the friend of the court and the opposing party.

(11) If the opposing party objects to the ex parte interim order, he or she shall file with the clerk of the court within 14 days after receiving notice of the order a written objection to, or a motion to modify or rescind, the ex parte interim order. The opposing party shall have a true copy of the written objection or motion served on the friend of the court and the party who obtained the ex parte interim order.

(12) If the opposing party files a written objection to the ex parte interim order, the friend of the court shall attempt to resolve the dispute within 14 days after receiving it. If the matter cannot be resolved, the friend of the court shall provide the opposing party with a form motion and order with written instructions for their use in modifying or rescinding the ex parte order without assistance of counsel. If the opposing party wishes to proceed without assistance of counsel, the friend of the court shall schedule a hearing with the court that shall

be held within 21 days after the filing of the motion. If the opposing party files a motion to modify or rescind the ex parte interim order and requests a hearing, the court shall resolve the dispute within 28 days after the hearing is requested.

(13) An ex parte interim order issued under this section shall contain the following notice:

NOTICE:

1. You may file a written objection to this order or a motion to modify or rescind this order. You must file the written objection or motion with the clerk of the court within 14 days after you were served with this order. You must serve a true copy of the objection or motion on the friend of the court and the party who obtained the order.

2. If you file a written objection, the friend of the court must try to resolve the dispute. If the friend of the court cannot resolve the dispute and if you wish to bring the matter before the court without the assistance of counsel, the friend of the court must provide you with form pleadings and written instructions and must schedule a hearing with the court.

History: Add. 1988, Act 377, Eff. Mar. 30, 1989;—Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993;—Am. 1996, Act 19, Eff. June 1, 1996.

Compiler's note: Former MCL 722.27a, which pertained to action by parent of deceased father or mother for visitation of unmarried minor child, was repealed by Act 161 of 1980, Imd. Eff. June 18, 1980.

722.27b Order for grandparenting time; circumstances; acknowledgment of parentage; commencement of action; procedures; affidavit; notice; opposing affidavit; hearing; basis for entry of order; condition; record; court mediation; frequency of filing complaint or motion seeking order; attorney fees; order prohibiting change of domicile of grandchild; effect of entry of order; modifying or terminating order.

Sec. 7b. (1) A child's grandparent may seek a grandparenting time order under 1 or more of the following circumstances:

(a) An action for divorce, separate maintenance, or annulment involving the child's parents is pending before the court.

(b) The child's parents are divorced, separated under a judgment of separate maintenance, or have had their marriage annulled.

(c) The child's parent who is a child of the grandparents is deceased.

(d) The child's parents have never been married, they are not residing in the same household, and paternity has been established by the completion of an acknowledgment of parentage under the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013, by an order of filiation entered under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, or by a determination by a court of competent jurisdiction that the individual is the father of the child.

(e) Except as otherwise provided in subsection (13), legal custody of the child has been given to a person other than the child's parent, or the child is placed outside of and does not reside in the home of a parent.

(f) In the year preceding the commencement of an action under subsection (3) for grandparenting time, the grandparent provided an established custodial environment for the child as described in section 7, whether or not the grandparent had custody under a court order.

(2) A court shall not permit a parent of a father who has never been married to the child's mother to seek an order for grandparenting time under this section unless the father has completed an acknowledgment of parentage under the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013, an order of filiation has been entered under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, or the father has been determined to be the father by a court of competent jurisdiction. The court shall not permit the parent of a putative father to seek an order for grandparenting time unless the putative father has provided substantial and regular support or care in accordance with the putative father's ability to provide the support or care.

(3) A grandparent seeking a grandparenting time order shall commence an action for grandparenting time, as follows:

(a) If the circuit court has continuing jurisdiction over the child, the child's grandparent shall seek a grandparenting time order by filing a motion with the circuit court in the county where the court has continuing jurisdiction.

(b) If the circuit court does not have continuing jurisdiction over the child, the child's grandparent shall seek a grandparenting time order by filing a complaint in the circuit court for the county where the child resides.

(4) All of the following apply to an action for grandparenting time under subsection (3):

(a) The complaint or motion for grandparenting time filed under subsection (3) shall be accompanied by an affidavit setting forth facts supporting the requested order. The grandparent shall give notice of the filing to

each person who has legal custody of, or an order for parenting time with, the child. A party having legal custody may file an opposing affidavit. A hearing shall be held by the court on its own motion or if a party requests a hearing. At the hearing, parties submitting affidavits shall be allowed an opportunity to be heard.

(b) In order to give deference to the decisions of fit parents, it is presumed in a proceeding under this subsection that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child's mental, physical, or emotional health. To rebut the presumption created in this subdivision, a grandparent filing a complaint or motion under this section must prove by a preponderance of the evidence that the parent's decision to deny grandparenting time creates a substantial risk of harm to the child's mental, physical, or emotional health. If the grandparent does not overcome the presumption, the court shall dismiss the complaint or deny the motion.

(c) If a court of appellate jurisdiction determines in a final and nonappealable judgment that the burden of proof described in subdivision (b) is unconstitutional, a grandparent filing a complaint or motion under this section must prove by clear and convincing evidence that the parent's decision to deny grandparenting time creates a substantial risk of harm to the child's mental, physical, or emotional health to rebut the presumption created in subdivision (b).

(5) If 2 fit parents sign an affidavit stating that they both oppose an order for grandparenting time, the court shall dismiss a complaint or motion seeking an order for grandparenting time filed under subsection (3). This subsection does not apply if 1 of the fit parents is a stepparent who adopted a child under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, and the grandparent seeking the order is the natural or adoptive parent of a parent of the child who is deceased or whose parental rights have been terminated.

(6) If the court finds that a grandparent has met the standard for rebutting the presumption described in subsection (4), the court shall consider whether it is in the best interests of the child to enter an order for grandparenting time. If the court finds by a preponderance of the evidence that it is in the best interests of the child to enter a grandparenting time order, the court shall enter an order providing for reasonable grandparenting time of the child by the grandparent by general or specific terms and conditions. In determining the best interests of the child under this subsection, the court shall consider all of the following:

- (a) The love, affection, and other emotional ties existing between the grandparent and the child.
- (b) The length and quality of the prior relationship between the child and the grandparent, the role performed by the grandparent, and the existing emotional ties of the child to the grandparent.
- (c) The grandparent's moral fitness.
- (d) The grandparent's mental and physical health.
- (e) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference.
- (f) The effect on the child of hostility between the grandparent and the parent of the child.
- (g) The willingness of the grandparent, except in the case of abuse or neglect, to encourage a close relationship between the child and the parent or parents of the child.
- (h) Any history of physical, emotional, or sexual abuse or neglect of any child by the grandparent.
- (i) Whether the parent's decision to deny, or lack of an offer of, grandparenting time is related to the child's well-being or is for some other unrelated reason.
- (j) Any other factor relevant to the physical and psychological well-being of the child.

(7) If the court has determined that a grandparent has met the standard for rebutting the presumption described in subsection (4), the court may refer that grandparent's complaint or motion for grandparenting time filed under subsection (3) to domestic relations mediation as provided by supreme court rule. If the complaint or motion is referred to the friend of the court mediation service and no settlement is reached through friend of the court mediation within a reasonable time after the date of referral, the complaint or motion shall be heard by the court as provided in this section.

(8) A grandparent may not file more than once every 2 years, absent a showing of good cause, a complaint or motion under subsection (3) seeking a grandparenting time order. If the court finds there is good cause to allow a grandparent to file more than 1 complaint or motion under this section in a 2-year period, the court shall allow the filing and shall consider the complaint or motion. Upon motion of a person, the court may order reasonable attorney fees to the prevailing party.

(9) The court shall not enter an order prohibiting an individual who has legal custody of a child from changing the domicile of the child if the prohibition is primarily for the purpose of allowing a grandparent to exercise the rights conferred in a grandparenting time order entered under this section.

(10) A grandparenting time order entered under this section does not create parental rights in the individual or individuals to whom grandparenting time rights are granted. The entry of a grandparenting time order does not prevent a court of competent jurisdiction from acting upon the custody of the child, the parental rights of

the child, or the adoption of the child.

(11) A court shall not modify or terminate a grandparenting time order entered under this section unless it finds by a preponderance of the evidence, on the basis of facts that have arisen since entry of the grandparenting time order or were unknown to the court at the time it entered that order, that a change has occurred in the circumstances of the child or his or her custodian and that a modification or termination of the existing order is necessary to avoid creating a substantial risk of harm to the mental, physical, or emotional health of the child. A court modifying or terminating a grandparenting time order under this subsection shall include specific findings of fact in its order in support of its decision.

(12) The court shall make a record of its analysis and findings under subsections (4), (6), (8), and (11), including the reasons for granting or denying a requested grandparenting time order.

(13) Except as otherwise provided in this subsection, adoption of a child or placement of a child for adoption under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, terminates the right of a grandparent to commence an action for grandparenting time with that child. Adoption of a child by a stepparent under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, does not terminate the right of the parent of a deceased parent of the child to commence an action for grandparenting time with that child.

History: Add. 1982, Act 340, Imd. Eff. Dec. 17, 1982;—Am. 1996, Act 19, Eff. June 1, 1996;—Am. 2004, Act 542, Imd. Eff. Jan. 3, 2005;—Am. 2006, Act 353, Imd. Eff. Sept. 18, 2006.

Constitutionality: The Michigan Court of Appeals in DeRose v DeRose, 249 Mich App 388; 643 NW2d 259 (2002) held that section 7b of the child custody act of 1970, 1970 PA 91, MCL 722.27b, is unconstitutional. The Michigan Supreme Court affirmed. [DeRose v DeRose, 496 Mich 320; 666 NW2d 636 (2003)] The Michigan Supreme Court held that it was bound by the decision in US Supreme Court in Troxel v Granville, 530 US 57; 120 S Ct 2054; 147 L Ed 2d 49 (2000). The US Supreme Court established in that decision that parents have a fundamental right to raise their children, and on that basis, “the parents have the right to make decisions for children, and such decisions must be accorded deference or weight.” The Michigan Supreme Court held that MCL 722.27b failed to “require that a trial court accord deference to the decisions of fit parents regarding grandparent visitation” and is therefore constitutionally invalid.

722.28 Child custody disputes; appeal, grounds.

Sec. 8. To expedite the resolution of a child custody dispute by prompt and final adjudication, all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.

History: 1970, Act 91, Eff. Apr. 1, 1971.

722.29 Transition to centralized receipt and disbursement of support and fees.

Sec. 9. The department, the SDU, and each office of the friend of the court shall cooperate in the transition to the centralized receipt and disbursement of support and fees. An office of the friend of the court shall continue to receive and disburse support and fees through the transition, based on the schedule developed as required by section 6 of the office of child support act, 1971 PA 174, MCL 400.236, and modifications to that schedule as the department considers necessary.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1999, Act 156, Imd. Eff. Nov. 3, 1999.

722.30 Access to records or information by noncustodial parent.

Sec. 10. Notwithstanding any other provision of law, a parent shall not be denied access to records or information concerning his or her child because the parent is not the child's custodial parent, unless the parent is prohibited from having access to the records or information by a protective order. As used in this section, “records or information” includes, but is not limited to, medical, dental, and school records, day care provider's records, and notification of meetings regarding the child's education.

History: Add. 1996, Act 304, Eff. Jan. 1, 1997.

722.31 Legal residence change of child whose parental custody governed by court order.

Sec. 11. (1) A child whose parental custody is governed by court order has, for the purposes of this section, a legal residence with each parent. Except as otherwise provided in this section, a parent of a child whose custody is governed by court order shall not change a legal residence of the child to a location that is more than 100 miles from the child's legal residence at the time of the commencement of the action in which the order is issued.

(2) A parent's change of a child's legal residence is not restricted by subsection (1) if the other parent consents to, or if the court, after complying with subsection (4), permits, the residence change. This section does not apply if the order governing the child's custody grants sole legal custody to 1 of the child's parents.

(3) This section does not apply if, at the time of the commencement of the action in which the custody

order is issued, the child's 2 residences were more than 100 miles apart. This section does not apply if the legal residence change results in the child's 2 legal residences being closer to each other than before the change.

(4) Before permitting a legal residence change otherwise restricted by subsection (1), the court shall consider each of the following factors, with the child as the primary focus in the court's deliberations:

(a) Whether the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent.

(b) The degree to which each parent has complied with, and utilized his or her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.

(c) The degree to which the court is satisfied that, if the court permits the legal residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each parent; and whether each parent is likely to comply with the modification.

(d) The extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation.

(e) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(5) Each order determining or modifying custody or parenting time of a child shall include a provision stating the parent's agreement as to how a change in either of the child's legal residences will be handled. If such a provision is included in the order and a child's legal residence change is done in compliance with that provision, this section does not apply. If the parents do not agree on such a provision, the court shall include in the order the following provision: "A parent whose custody or parenting time of a child is governed by this order shall not change the legal residence of the child except in compliance with section 11 of the "Child Custody Act of 1970", 1970 PA 91, MCL 722.31."

(6) If this section applies to a change of a child's legal residence and the parent seeking to change that legal residence needs to seek a safe location from the threat of domestic violence, the parent may move to such a location with the child until the court makes a determination under this section.

History: Add. 2000, Act 422, Imd. Eff. Jan. 9, 2001.

BLOOD DONATIONS
Act 22 of 1971

AN ACT prescribing the age at which persons may donate their blood.

History: 1971, Act 22, Imd. Eff. May 13, 1971.

The People of the State of Michigan enact:

722.41 Blood donation by person 17 years of age or over; permission or authorization unnecessary.

Sec. 1. A person 17 years of age or over may donate blood in a voluntary and noncompensatory blood program without the necessity of obtaining parental or guardian's permission or authorization.

History: 1971, Act 22, Imd. Eff. May 13, 1971;—Am. 1981, Act 228, Imd. Eff. Jan. 12, 1982.

AGE OF MAJORITY ACT OF 1971
Act 79 of 1971

AN ACT to define the age of majority or legal age and to prescribe and define the duties, liabilities, responsibilities, rights and legal capacity of persons 18 or more years of age.

History: 1971, Act 79, Eff. Jan. 1, 1972.

The People of the State of Michigan enact:

722.51 Short title.

Sec. 1. This act shall be known and may be cited as the “Age of Majority Act of 1971”.

History: 1971, Act 79, Eff. Jan. 1, 1972.

722.52 Adult of legal age; support payments for person 18 years of age or older.

Sec. 2. (1) Except as otherwise provided in the state constitution of 1963 and subsection (2), notwithstanding any other provision of law to the contrary, a person who is at least 18 years of age on or after January 1, 1972, is an adult of legal age for all purposes whatsoever, and shall have the same duties, liabilities, responsibilities, rights, and legal capacity as persons heretofore acquired at 21 years of age.

(2) A court may order support payments for a person 18 years of age or older as provided in 1 or more of the following:

(a) Chapter 84 of the revised statutes of 1846, being sections 552.1 to 552.45 of the Michigan Compiled Laws.

(b) The child custody act of 1970, Act No. 91 of the Public Acts of 1970, being sections 722.21 to 722.29 of the Michigan Compiled Laws.

(c) The family support act, Act No. 138 of the Public Acts of 1966, being sections 552.451 to 552.459 of the Michigan Compiled Laws.

(d) The paternity act, Act No. 205 of the Public Acts of 1956, being sections 722.711 to 722.730 of the Michigan Compiled Laws.

(e) Act No. 293 of the Public Acts of 1968, being sections 722.1 to 722.6 of the Michigan Compiled Laws.

History: 1971, Act 79, Eff. Jan. 1, 1972;—Am. 1990, Act 104, Eff. Oct. 10, 1990.

Compiler's note: In subsection (2)(a), the phrase “revised statutes of 1846” evidently should read “Revised Statutes of 1846.”

722.53 Superseded laws.

Sec. 3. This act supersedes all provisions of law prescribing duties, liabilities, responsibilities, rights and legal capacity of persons 18 years of age through 20 years of age different from persons 21 years of age, including but not limited to the following enumerated public acts:

Sections 2 and 6 of Act No. 372 of the Public Acts of 1927, as amended, being sections 28.422 and 28.426 of the Compiled Laws of 1948.

Section 1 of Act No. 53 of the Public Acts of 1921, being section 41.501 of the Compiled Laws of 1948.

Section 107 of chapter 14 of the Revised Statutes of 1846, as amended, being section 55.107 of the Compiled Laws of 1948.

Section 69 of Act No. 206 of the Public Acts of 1893, being section 211.69 of the Compiled Laws of 1948.

Sections 305 and 310a of Act No. 300 of the Public Acts of 1949, as amended, being sections 257.305 and 257.310a of the Compiled Laws of 1948.

Sections 9a and 44 of Act No. 151 of the Public Acts of 1923, as amended, being sections 330.19a and 330.54 of the Compiled Laws of 1948.

Section 55b of Act No. 280 of the Public Acts of 1939, as amended, being section 400.55b of the Compiled Laws of 1948.

Section 823 of Act No. 317 of the Public Acts of 1969, being section 418.823 of the Compiled Laws of 1948.

Section 12 of Act No. 27 of the Public Acts of 1959, as amended, being section 431.42 of the Compiled Laws of 1948.

Sections 33, 33a and 33b of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, being sections 436.33, 436.33a and 436.33b of the Compiled Laws of 1948.

Section 1 of Act No. 160 of the Public Acts of 1919, being section 551.251 of the Compiled Laws of 1948.

Sections 1 to 4, 6, 7 and 9 of Act No. 172 of the Public Acts of 1959, as amended, being sections 554.451 to 554.454, 554.456, 554.457 and 554.459 of the Compiled Laws of 1948.

Sections 15 and 29 of chapter 66 of the Revised Statutes of 1846, being sections 558.15 and 558.29 of the

Compiled Laws of 1948.

Act No. 236 of the Public Acts of 1961, as amended, being sections 600.101 to 600.9930 of the Compiled Laws of 1948.

Act No. 288 of the Public Acts of 1939, as amended, being sections 701.1 to 713.6 of the Compiled Laws of 1948.

Act No. 293 of the Public Acts of 1968, being sections 722.1 to 722.6 of the Compiled Laws of 1948.

Sections 1 to 3 of Act No. 31 of the Public Acts of 1915, being sections 722.641 to 722.643 of the Compiled Laws of 1948.

Sections 28, 141, 141a, 141c, 141d, 142, 243a to 243e and 345 of Act No. 328 of the Public Acts of 1931, as amended, being sections 750.28, 750.141, 750.141a, 750.141c, 750.141d, 750.142, 750.243a to 750.243e and 750.345 of the Compiled Laws of 1948.

Act No. 186 of the Public Acts of 1959, being sections 752.891 and 752.892 of the Compiled Laws of 1948.

Section 10 of chapter 6 of Act No. 175 of the Public Acts of 1927, being section 766.10 of the Compiled Laws of 1948.

History: 1971, Act 79, Eff. Jan. 1, 1972.

722.54 Saving clause.

Sec. 4. This act does not impair or affect any act done, offense committed or right accruing, accrued or acquired, or a liability, penalty, forfeiture or punishment incurred before this act takes effect, but the same may be enjoyed, asserted and enforced, as fully and to the same extent as if this act had not been passed. Such proceedings may be consummated under and in accordance with the law in force at the time the proceedings are or were commenced. Proceedings pending at the effective date of this act and proceedings instituted thereafter for any act, offense committed, right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred before the effective date of this act may be continued or instituted under and in accordance with the law in force at the time of the commission of the act, offense committed, right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred.

History: 1971, Act 79, Eff. Jan. 1, 1972.

722.55 Effective date.

Sec. 5. This act shall take effect January 1, 1972.

History: 1971, Act 79, Eff. Jan. 1, 1972.

CHILD WELFARE AGENCIES Act 47 of 1944 (1st Ex. Sess.)

722.101-722.108 Repealed. 1973, Act 116, Eff. Mar. 29, 1974.

CHILD CARE ORGANIZATIONS

Act 116 of 1973

AN ACT to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and duties of certain departments of this state and adoption facilitators; to provide penalties; and to repeal acts and parts of acts.

History: 1973, Act 116, Eff. Mar. 29, 1974;—Am. 1994, Act 209, Eff. Jan. 1, 1995;—Am. 1997, Act 165, Eff. Mar. 31, 1998.

Popular name: Act 116

Popular name: Child Care Licensing Act

The People of the State of Michigan enact:

722.111 Definitions; exemption from inspections and on-site visits.

Sec. 1. (1) As used in this act:

(a) "Child care organization" means a governmental or nongovernmental organization having as its principal function receiving minor children for care, maintenance, training, and supervision, notwithstanding that educational instruction may be given. Child care organization includes organizations commonly described as child caring institutions, child placing agencies, children's camps, children's campsites, children's therapeutic group homes, child care centers, day care centers, nursery schools, parent cooperative preschools, foster homes, group homes, or child care homes. Child care organization does not include a governmental or nongovernmental organization that does either of the following:

(i) Provides care exclusively to minors who have been emancipated by court order under section 4(3) of 1968 PA 293, MCL 722.4.

(ii) Provides care exclusively to persons who are 18 years of age or older and to minors who have been emancipated by court order under section 4(3) of 1968 PA 293, MCL 722.4, at the same location.

(b) "Child caring institution" means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child caring institution for that purpose, and operates throughout the year. An educational program may be provided, but the educational program shall not be the primary purpose of the facility. Child caring institution includes a maternity home for the care of unmarried mothers who are minors and an agency group home, that is described as a small child caring institution owned, leased, or rented by a licensed agency providing care for more than 4 but less than 13 minor children. Child caring institution also includes institutions for mentally retarded or emotionally disturbed minor children. Child caring institution does not include a hospital, nursing home, or home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, a boarding school licensed under section 1335 of the revised school code, 1976 PA 451, MCL 380.1335, a hospital or facility operated by the state or licensed under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, in which a child has been placed under section 5(6).

(c) "Child placing agency" means a governmental organization or an agency organized under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, for the purpose of receiving children for placement in private family homes for foster care or for adoption. The function of a child placing agency may include investigating applicants for adoption and investigating and certifying foster family homes and foster family group homes as provided in this act. The function of a child placing agency may also include supervising children who are 16 or 17 years of age and who are living in unlicensed residences as provided in section 5(4).

(d) "Children's camp" means a residential, day, troop, or travel camp that provides care and supervision and is conducted in a natural environment for more than 4 children, apart from the children's parents, relatives, or legal guardians, for 5 or more days in a 14-day period.

(e) "Children's campsite" means the outdoor setting where a children's residential or day camp is located.

(f) "Children's therapeutic group home" means a child caring institution receiving not more than 6 minor children who are diagnosed with a developmental disability as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a serious emotional disturbance as defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d. A children's therapeutic group home meets all of the following requirements:

(i) Provides care, maintenance, and supervision, usually on a 24-hour basis.

(ii) Complies with the rules for child caring institutions, except that behavior management rooms, personal restraint, mechanical restraint, or seclusion which is allowed in certain circumstances under licensing rules are prohibited in a children's therapeutic group home.

(iii) Is not a private home.

(iv) Is not located on a campus with other licensed facilities.

(g) "Child care center" or "day care center" means a facility, other than a private residence, receiving 1 or more preschool or school-age children for care for periods of less than 24 hours a day, where the parents or guardians are not immediately available to the child. Child care center or day care center includes a facility that provides care for not less than 2 consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, before- or after-school program, or drop-in center. Child care center or day care center does not include any of the following:

(i) A Sunday school, a vacation bible school, or a religious instructional class that is conducted by a religious organization where children are attending for not more than 3 hours per day for an indefinite period or for not more than 8 hours per day for a period not to exceed 4 weeks during a 12-month period.

(ii) A facility operated by a religious organization where children are in the religious organization's care for not more than 3 hours while persons responsible for the children are attending religious services.

(iii) A program that is primarily supervised, school-age-child-focused training in a specific subject, including, but not limited to, dancing, drama, music, or religion. This exclusion applies only to the time a child is involved in supervised, school-age-child-focused training.

(iv) A program that is primarily an incident of group athletic or social activities for school-age children sponsored by or under the supervision of an organized club or hobby group, including, but not limited to, youth clubs, scouting, and school-age recreational or supplementary education programs. This exclusion applies only to the time the school-age child is engaged in the group athletic or social activities and if the school-age child can come and go at will.

(h) "Department" means the department of human services or a successor agency or department responsible for licensure and registration under this act.

(i) "Private home" means a private residence in which the licensee or registrant permanently resides as a member of the household, which residency is not contingent upon caring for children or employment by a licensed or approved child placing agency. Private home includes a full-time foster family home, a full-time foster family group home, a group child care home, or a family child care home, as follows:

(i) "Foster family home" is a private home in which 1 but not more than 4 minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, are given care and supervision for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent, legal guardian, or legal custodian.

(ii) "Foster family group home" means a private home in which more than 4 but fewer than 7 minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, are provided care for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent, legal guardian, or legal custodian.

(iii) "Family child care home" means a private home in which 1 but fewer than 7 minor children are received for care and supervision for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Family child care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year.

(iv) "Group child care home" means a private home in which more than 6 but not more than 12 minor children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Group child care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year.

(j) "Legal custodian" means an individual who is at least 18 years of age in whose care a minor child remains or is placed after a court makes a finding under section 13a(5) of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(k) "Licensee" means a person, partnership, firm, corporation, association, nongovernmental organization, or local or state government child care organization that has been issued a license under this act to operate a child care organization.

(l) "Provisional license" means a license issued to a child care organization that is temporarily unable to

conform to all of the rules promulgated under this act.

(m) "Regular license" means a license issued to a child care organization indicating that the organization is in compliance with all rules promulgated under this act.

(n) "Guardian" means the guardian of the person.

(o) "Minor child" means any of the following:

(i) A person less than 18 years of age.

(ii) A person who is a resident in a child caring institution, children's camp, foster family home, or foster family group home; who becomes 18 years of age while residing in the child caring institution, children's camp, foster family home, or foster family group home; and who continues residing in the child caring institution, children's camp, foster family home, or foster family group home to receive care, maintenance, training, and supervision. A minor child under this subparagraph does not include a person 18 years of age or older who is placed in a child caring institution, foster family home, or foster family group home under an adjudication under section 2(a) of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or section 1 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1. This subparagraph applies only if the number of those residents who become 18 years of age does not exceed the following:

(A) Two, if the total number of residents is 10 or fewer.

(B) Three, if the total number of residents is not less than 11 and not more than 14.

(C) Four, if the total number of residents is not less than 15 and not more than 20.

(D) Five, if the total number of residents is 21 or more.

(iii) A person 18 years of age or older who is placed in a foster family home under section 5(7).

(p) "Registrant" means a person who has been issued a certificate of registration under this act to operate a family child care home.

(q) "Registration" means the process by which the department regulates family child care homes, and includes the requirement that a family child care home certify to the department that the family child care home has complied with and will continue to comply with the rules promulgated under this act.

(r) "Certificate of registration" means a written document issued under this act to a family child care home through registration.

(s) "Related" means a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin, great aunt, great uncle, or stepgrandparent related by marriage, blood, or adoption.

(t) "Religious organization" means a church, ecclesiastical corporation, or group, not organized for pecuniary profit, that gathers for mutual support and edification in piety or worship of a supreme deity.

(u) "School-age child" means a child who is eligible to be enrolled in a grade of kindergarten or above, but is less than 13 years of age.

(2) A facility or program for school-age children that is currently operated and has been in operation and licensed or approved as provided in this act for a minimum of 2 years may apply to the department to be exempt from inspections and on-site visits required under section 5. The department shall respond to a facility or program requesting exemption from inspections and on-site visits required under section 5 as provided under this subsection within 45 days from the date the completed application is received. The department may grant exemption from inspections and on-site visits required under section 5 to a facility or program that meets all of the following criteria:

(a) The facility or program has been in operation and licensed or approved under this act for a minimum of 2 years immediately preceding the application date.

(b) During the 2 years immediately preceding the application date, the facility or program has not had a substantial violation of this act, rules promulgated under this act, or the terms of a licensure or an approval under this act.

(c) The school board, board of directors, or governing body adopts a resolution supporting the application for exemption from inspections and on-site visits required under section 5 as provided for in this subsection.

(3) A facility or program granted exemption from inspections and on-site visits required under section 5 as provided under subsection (2) is required to maintain status as a licensed or approved program under this act and must continue to meet the requirements of this act, the rules promulgated under this act, or the terms of a license or approval under this act. A facility or program granted exemption from inspections and on-site visits required under section 5 as provided under subsection (2) is subject to an investigation by the department if a violation of this act or a violation of a rule promulgated under this act is alleged.

(4) A facility or program granted exemption from inspections and on-site visits required under section 5 as provided under subsection (2) is not subject to interim or annual licensing reviews. A facility or program granted exemption from inspections and on-site visits required under section 5 as provided under subsection (2) is required to submit documentation annually demonstrating compliance with the requirements of this act, the rules promulgated under this act, or the terms of a license or approval under this act.

(5) An exemption provided under subsection (2) may be rescinded by the department if the facility or program willfully and substantially violates this act, the rules promulgated under this act, or the terms of a license or approval granted under this act.

History: 1973, Act 116, Eff. Mar. 29, 1974;—Am. 1978, Act 438, Imd. Eff. Oct. 5, 1978;—Am. 1980, Act 32, Imd. Eff. Mar. 10, 1980;—Am. 1980, Act 232, Imd. Eff. July 20, 1980;—Am. 1980, Act 510, Imd. Eff. Jan. 26, 1981;—Am. 1981, Act 126, Imd. Eff. July 23, 1981;—Am. 1984, Act 139, Imd. Eff. June 1, 1984;—Am. 1991, Act 162, Imd. Eff. Dec. 9, 1991;—Am. 1994, Act 205, Eff. Jan. 1, 1995;—Am. 2002, Act 696, Eff. Mar. 31, 2003;—Am. 2005, Act 202, Imd. Eff. Nov. 10, 2005;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007.

Constitutionality: The First and Fourteenth Amendments of the United States Constitution do not prevent the state from compelling the defendants to conform to the licensure requirements of the childcare organization act. Department of Social Services v Emmanuel Baptist Preschool, 434 Mich 380; 455 NW2d 1 (1990).

Compiler's note: For transfer of powers and duties of child welfare licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.111a Concurrent licensing as adult foster care family home; additional children; combined licensed capacity; definitions.

Sec. 1a. (1) A private residence licensed as a foster family home or foster family group home may be concurrently licensed as an adult foster care family home. Additional children not related to a resident of the foster family home or foster family group home shall not be received in the foster family home or foster family group home after the filing of an application for an adult foster care family home license.

(2) A child caring institution with a licensed capacity of 6 or fewer residents may be concurrently licensed as an adult foster care small group home. Additional children not related to a resident of the child caring institution shall not be received in the child caring institution after the filing of an application for an adult foster care small group home license. The combined licensed capacity shall not exceed a combination of 6 children and adults.

(3) As used in this section:

(a) "Adult foster care family home" means that term as defined in section 3 of the adult foster care facility licensing act, Act No. 218 of the Public Acts of 1979, being section 400.703 of the Michigan Compiled Laws.

(b) "Adult foster care small group home" means that term as defined in section 3 of the adult foster care facility licensing act, Act No. 218 of the Public Acts of 1979, being section 400.703 of the Michigan Compiled Laws.

History: Add. 1984, Act 139, Imd. Eff. June 1, 1984.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.112 Rules; ad hoc committee; review.

Sec. 2. (1) The department of human services, referred to in this act as the "department", is responsible for the development of rules for the care and protection of children in organizations covered by this act and for the promulgation of these rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The department shall establish an ad hoc committee for each type of child care organization as defined in this act when it is formulating or amending rules under this act. The committee shall consist of not less than 12 members, and shall include representatives of the following groups and agencies:

(a) Department of community health.

(b) Department of labor and economic growth, bureau of fire services, and state fire safety board.

(c) Department of education.

(d) Representatives of organizations affected by this act.

(e) Parents of children affected by this act.

(3) A majority of the members appointed to the committee established by subsection (2) shall be representatives of organizations affected by this act and parents of children affected by this act. The committee shall serve during the period of the formulation of rules, shall have responsibility for making

recommendations on the content of rules, and shall recommend to the department revisions in proposed rules at any time before their promulgation.

(4) The rules promulgated under this act shall be restricted to the following:

(a) The operation and conduct of child care organizations and the responsibility the organizations assume for child care.

(b) The character, suitability, training, and qualifications of applicants and other persons directly responsible for the care and welfare of children served.

(c) The general financial ability and competence of applicants to provide necessary care for children and to maintain prescribed standards.

(d) The number of individuals or staff required to insure adequate supervision and care of the children received.

(e) The appropriateness, safety, cleanliness, and general adequacy of the premises, including maintenance of adequate fire prevention and health standards to provide for the physical comfort, care, and well being of the children received. However, the rules with respect to fire prevention and fire safety shall not apply to a child care center established and operated by an intermediate school board, the board of a local school district, or by the board or governing body of a state approved nonpublic school, if the child care center is located in a school building that is approved by the bureau of fire services created in section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b, or other similar authority as provided in section 3 of 1937 PA 306, MCL 388.853, for school purposes and is in compliance with the school fire safety rules, R 29.1901 to R 29.1934 of the Michigan administrative code, as determined by the bureau of fire services or a fire inspector certified pursuant to section 2b of the fire prevention code, 1941 PA 207, MCL 29.2b.

(f) Provisions for food, clothing, educational opportunities, programs, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of children served.

(g) Provisions to safeguard the legal rights of children served.

(h) Maintenance of records pertaining to admission, progress, health, and discharge of children.

(i) Filing of reports with the department.

(j) Discipline of children.

(k) Transportation safety.

(5) Rules once promulgated are subject to major review by an ad hoc committee not less than once every 5 years and shall be reviewed biennially by the department. The ad hoc committee shall be established by the department, shall consist of not less than 12 members, and shall include representatives of the groups and agencies indicated in subsection (2). The ad hoc committee shall hold at least 2 public hearings regarding the review of rules and shall report its recommendations regarding rules to the appropriate committees of the legislature.

History: 1973, Act 116, Eff. Mar. 29, 1974;—Am. 1983, Act 150, Imd. Eff. July 18, 1983;—Am. 2006, Act 206, Imd. Eff. June 19, 2006.

Constitutionality: The First and Fourteenth Amendments of the United States Constitution do not prevent the state from compelling the defendants to conform to the licensure requirements of the childcare organization act. Department of Social Services v Emmanuel Baptist Preschool, 434 Mich 380; 455 NW2d 1 (1990).

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

Administrative rules: R 400.1 et seq.; R 400.1301 et seq.; R 400.4101 et seq.; R 400.5101 et seq.; R 400.5106 et seq.; R 400.9101 et seq.; R 400.11101 et seq.; R 400.12101 et seq.; and R 400.16001 of the Michigan Administrative Code.

722.112a Child caring institution, child care center, or group child care home; person certified in first aid and CPR; applicability of MCL 722.125.

Sec. 2a. (1) A child caring institution, child care center, or group child care home shall have on duty at all times while the institution, center, or home is providing care to 1 or more children at least 1 person who has been certified within the preceding 36 months in first aid and within the preceding 12 months in age-appropriate cardiopulmonary resuscitation by the American red cross, the American heart association, or an equivalent organization or institution approved by the department.

(2) Section 15 does not apply to this section.

History: Add. 1994, Act 349, Eff. Dec. 16, 1995;—Am. 1998, Act 440, Imd. Eff. Dec. 30, 1998;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.112b Definitions; scope.

Sec. 2b. (1) As used in this section and sections 2c, 2d, and 2e, unless the context requires otherwise:

(a) "Adaptive device" means a mechanical device incorporated in the individual plan of services that is intended to provide anatomical support or to assist the minor child with adaptive skills.

(b) "Chemical restraint" means a drug that meets all of the following criteria:

(i) Is administered to manage a minor child's behavior in a way that reduces the safety risk to the minor child or others.

(ii) Has the temporary effect of restricting the minor child's freedom of movement.

(iii) Is not a standard treatment for the minor child's medical or psychiatric condition.

(c) "Emergency safety intervention" means use of personal restraint or seclusion as an immediate response to an emergency safety situation.

(d) "Emergency safety situation" means the onset of an unanticipated, severely aggressive, or destructive behavior that places the minor child or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention.

(e) "Individual plan of services" means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

(f) "Licensed practitioner" means an individual who has been trained in the use of personal restraint and seclusion, who is knowledgeable of the risks inherent in the implementation of personal restraint and seclusion, and who is 1 of the following:

(i) A physician licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(ii) An individual who has been issued a specialty certification as a nurse practitioner under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iii) A physician's assistant licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iv) A registered nurse licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(v) A psychologist and a limited licensed psychologist licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(vi) A counselor and a limited licensed counselor licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(vii) A licensed master's social worker licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(g) "Mechanical restraint" means a device attached or adjacent to the minor child's body that he or she cannot easily remove and that restricts freedom of movement or normal access to his or her body. Mechanical restraint does not include the use of a protective or adaptive device or a device primarily intended to provide anatomical support. Mechanical restraint does not include use of a mechanical device to ensure security precautions appropriate to the condition and circumstances of a minor child placed in the child caring institution as a result of an order of the family division of circuit court under section 2(a) of chapter XIII A of the probate code of 1939, 1939 PA 288, MCL 712A.2.

(h) "Personal restraint" means the application of physical force without the use of a device, for the purpose of restraining the free movement of a minor child's body. Personal restraint does not include:

(i) The use of a protective or adaptive device.

(ii) Briefly holding a minor child without undue force in order to calm or comfort him or her.

(iii) Holding a minor child's hand, wrist, shoulder, or arm to safely escort him or her from 1 area to another.

(iv) The use of a protective or adaptive device or a device primarily intended to provide anatomical support.

(i) "Protective device" means an individually fabricated mechanical device or physical barrier, the use of which is incorporated in the individualized written plan of service. The use of a protective device is intended to prevent the minor child from causing serious self-injury associated with documented, frequent, and unavoidable hazardous events.

(j) "Seclusion" means the involuntary placement of a minor child in a room alone, where the minor child is prevented from exiting by any means, including the physical presence of a staff person if the sole purpose of that staff person's presence is to prevent the minor child from exiting the room. Seclusion does not include the

use of a sleeping room during regular sleeping hours to ensure security precautions appropriate to the condition and circumstances of a minor child placed in the child caring institution as a result of an order of the family division of circuit court under section 2(a) and (b) of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, if the minor child's individual case treatment plan indicates that the security precautions would be in the minor child's best interest.

(k) "Serious injury" means any significant impairment of the physical condition of the minor child as determined by qualified medical personnel that results from an emergency safety intervention. This includes, but is not limited to, burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.

(2) The provisions of this section and sections 2c, 2d, and 2e only apply to a child caring institution that contracts with or receives payment from a community mental health services program or prepaid inpatient health plan for the care, treatment, maintenance, and supervision of a minor child in that child caring institution.

History: Add. 2004, Act 531, Imd. Eff. Jan. 3, 2005;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.112c Personal restraint and seclusion; use in child caring institution contracting with community mental health services program or prepaid inpatient health plan; education, training, and knowledge.

Sec. 2c. (1) If a child caring institution contracts with and receives payment from a community mental health services program or prepaid inpatient health plan for the care, treatment, maintenance, and supervision of a minor child in a child caring institution, the child caring institution may place a minor child in personal restraint or seclusion only as provided in this section and sections 2d and 2e but shall not use mechanical restraint or chemical restraint.

(2) Not later than 180 days after the effective date of the amendatory act that added this section, a child caring institution shall require its staff to have ongoing education, training, and demonstrated knowledge of all of the following:

(a) Techniques to identify minor children's behaviors, events, and environmental factors that may trigger emergency safety situations.

(b) The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods to prevent emergency safety situations.

(c) The safe use of personal restraint or seclusion, including the ability to recognize and respond to signs of physical distress in minor children who are in personal restraint or seclusion or who are being placed in personal restraint or seclusion.

(3) A child caring institution's staff shall be trained in the use of personal restraint and seclusion, shall be knowledgeable of the risks inherent in the implementation of personal restraint and seclusion, and shall demonstrate competency regarding personal restraint or seclusion before participating in the implementation of personal restraint or seclusion. A child caring institution's staff shall demonstrate their competencies in these areas on a semiannual basis. The state agency licensing child caring institutions shall review and determine the acceptability of the child caring institutions' staff education, training, knowledge, and competency requirements required by this subsection and the training and knowledge required of a licensed practitioner in the use of personal restraint and seclusion.

History: Add. 2004, Act 531, Imd. Eff. Jan. 3, 2005.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.112d Personal restraint or seclusion; use; limitations; requirements.

Sec. 2d. (1) Personal restraint or seclusion shall not be imposed as a means of coercion, discipline, convenience, or retaliation by a child caring institution's staff.

(2) An order for personal restraint or seclusion shall not be written as a standing order or on an as-needed basis.

(3) Personal restraint or seclusion must not result in harm or injury to the minor child and shall be used only to ensure the minor child's safety or the safety of others during an emergency safety situation. Personal

restraint or seclusion shall only be used until the emergency safety situation has ceased and the minor child's safety and the safety of others can be ensured even if the order for personal restraint or seclusion has not expired. Personal restraint and seclusion of a minor child shall not be used simultaneously.

(4) Personal restraint or seclusion shall be performed in a manner that is safe, appropriate, and proportionate to the severity of the minor child's behavior, chronological and developmental age, size, gender, physical condition, medical condition, psychiatric condition, and personal history, including any history of physical or sexual abuse.

(5) Except as provided in subsection (6), at the time a minor child is admitted to a child caring institution, the child caring institution shall do all of the following:

(a) Inform the minor child and his or her parent or legal guardian of the provider's policy regarding the use of personal restraint or seclusion during an emergency safety situation that may occur while the minor child is under the care of the child caring institution.

(b) Communicate the provider's personal restraint and seclusion policy in a language that the minor child or his or her parent or legal guardian will understand, including American sign language, if appropriate. The provider shall procure an interpreter or translator, if necessary to fulfill the requirement of this subdivision.

(c) Obtain a written acknowledgment from the minor child's parent or legal guardian that he or she has been informed of the provider's policy on the use of personal restraint and seclusion during an emergency safety situation. The child caring institution's staff shall file the acknowledgment in the minor child's records.

(d) Provide a copy of the policy to the minor child's parent or legal guardian.

(6) The child caring institution is not required to inform, communicate, and obtain the written acknowledgment from a minor child's parent or legal guardian as specified in subsection (5) if the minor child is within the care and supervision of the child caring institution as a result of an order of commitment of the family division of circuit court to a state institution, state agency, or otherwise, and has been adjudicated to be a dependent, neglected, or delinquent under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, if the minor child's individual case treatment plan indicates that notice would not be in the minor child's best interest.

(7) An order for personal restraint or seclusion shall only be written by a licensed practitioner.

(8) A licensed practitioner shall order the least restrictive emergency safety intervention measure that is most likely to be effective in resolving the emergency safety situation based on consultation with staff. Consideration of less restrictive emergency safety intervention measures shall be documented in the minor child's record.

(9) If the order for personal restraint or seclusion is verbal, it must be received by a child caring institution staff member who is 1 of the following:

(a) A licensed practitioner.

(b) A social services supervisor as described in R 400.4118 of the Michigan administrative code.

(c) A supervisor of direct care workers as described in R 400.4120 of the Michigan administrative code.

(d) A practical nurse licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(10) A verbal order must be received while personal restraint or seclusion is being initiated by child caring institution staff or immediately after the emergency safety situation begins. The licensed practitioner shall be available to staff for consultation, at least by telephone, throughout the period of personal restraint or seclusion. The licensed practitioner shall verify the verbal order in signed written form in the minor child's record.

(11) An order for personal restraint or seclusion shall meet both of the following criteria:

(a) Be limited to no longer than the duration of the emergency safety situation.

(b) Not exceed 4 hours for a minor child 18 years of age or older; 2 hours for a minor child 9 to 17 years of age; or 1 hour for a minor child under 9 years of age.

(12) If more than 2 orders for personal restraint or seclusion are ordered for a minor child within a 24-hour period, the director of the child caring institution or his or her designated management staff shall be notified to determine whether additional measures should be taken to facilitate discontinuation of personal restraint or seclusion.

(13) If personal restraint continues for less than 15 minutes or seclusion continues for less than 30 minutes from the onset of the emergency safety intervention, the child caring institution staff qualified to receive a verbal order for personal restraint or seclusion, in consultation with the licensed practitioner, shall evaluate the minor child's psychological well-being immediately after the minor child is removed from seclusion or personal restraint. Staff shall also evaluate the minor child's physical well-being or determine if an evaluation is needed by a licensed practitioner authorized to conduct a face-to-face assessment under subsection (14).

(14) A face-to-face assessment shall be conducted if the personal restraint continues for 15 minutes or

more from the onset of the emergency safety intervention or if seclusion continues for 30 minutes or more from the onset of the emergency safety intervention. This face-to-face assessment shall be conducted by a licensed practitioner who is 1 of the following:

(a) A physician licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(b) An individual who has been issued a speciality certification as a nurse practitioner under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(c) A physician's assistant licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(d) A registered nurse licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(15) The face-to-face assessment shall be conducted within 1 hour of the onset of the emergency safety intervention and immediately after the minor child is removed from personal restraint or seclusion. The face-to-face assessment of the physical and psychological well-being of the minor child shall include, but is not limited to, all of the following:

(a) The minor child's physical and psychological status.

(b) The minor child's behavior.

(c) The appropriateness of the intervention measures.

(d) Any complications resulting from the intervention.

History: Add. 2004, Act 531, Imd. Eff. Jan. 3, 2005.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.112e Personal restraint or seclusion; release; documentation; record; notification; debriefing; report of serious occurrence; annual report.

Sec. 2e. (1) A minor child shall be released from personal restraint or seclusion whenever the circumstance that justified the use of personal restraint or seclusion no longer exists.

(2) Each instance of personal restraint or seclusion requires full justification for its use, and the results of the evaluation immediately following the use of personal restraint or seclusion shall be placed in the minor child's record.

(3) Each order for personal restraint or seclusion shall include all of the following:

(a) The name of the licensed practitioner ordering personal restraint or seclusion.

(b) The date and time the order was obtained.

(c) The personal restraint or seclusion ordered, including the length of time for which the licensed practitioner ordered its use.

(4) The child caring institution staff shall document the use of the personal restraint or seclusion in the minor child's record. That documentation shall be completed by the end of the shift in which the personal restraint or seclusion occurred. If the personal restraint or seclusion does not end during the shift in which it began, documentation shall be completed during the shift in which the personal restraint or seclusion ends. Documentation shall include all of the following:

(a) Each order for personal restraint or seclusion.

(b) The time the personal restraint or seclusion actually began and ended.

(c) The time and results of the 1-hour assessment.

(d) The emergency safety situation that required the resident to be personally restrained or secluded.

(e) The name of the staff involved in the personal restraint or seclusion.

(5) The child caring institution staff trained in the use of personal restraint shall continually assess and monitor the physical and psychological well-being of the minor child and the safe use of personal restraint throughout the duration of its implementation.

(6) The child caring institution staff trained in the use of seclusion shall be physically present in or immediately outside the seclusion room, continually assessing, monitoring, and evaluating the physical and psychological well-being of the minor. Video monitoring shall not be exclusively used to meet this requirement.

(7) The child caring institution staff shall ensure that documentation of staff monitoring and observation is entered into the minor child's record.

(8) If the emergency safety intervention continues beyond the time limit of the order for use of personal restraint or seclusion, child caring institution staff authorized to receive verbal orders for personal restraint or

seclusion shall immediately contact the licensed practitioner to receive further instructions.

(9) The child caring institution staff shall notify the minor child's parent or legal guardian and the appropriate state or local government agency that has responsibility for the minor child if the minor child is under the supervision of the child caring institution as a result of an order of commitment by the family division of circuit court to a state institution or otherwise as soon as possible after the initiation of personal restraint or seclusion. This notification shall be documented in the minor child's record, including the date and time of the notification, the name of the staff person providing the notification, and the name of the person to whom notification of the incident was reported. The child caring institution is not required to notify the parent or legal guardian as provided in this subsection if the minor child is within the care and supervision of the child caring institution as a result of an order of commitment of the family division of circuit court to a state institution, state agency, or otherwise, and has been adjudged to be dependent, neglected, or delinquent under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, if the minor child's individual case treatment plan indicates that the notice would not be in the minor child's best interest.

(10) Within 24 hours after the use of personal restraint or seclusion, child caring institution staff involved in the emergency safety intervention and the minor child shall have a face-to-face debriefing session. The debriefing shall include all staff involved in the seclusion or personal restraint except if the presence of a particular staff person may jeopardize the well-being of the minor child. Other staff members and the minor child's parent or legal guardian may participate in the debriefing if it is considered appropriate by the child caring institution.

(11) The child caring institution shall conduct a debriefing in a language that is understood by the minor child. The debriefing shall provide both the minor child and the staff opportunity to discuss the circumstances resulting in the use of personal restraint or seclusion and strategies to be used by staff, the minor child, or others that could prevent the future use of personal restraint or seclusion.

(12) Within 24 hours after the use of personal restraint or seclusion, all child caring institution staff involved in the emergency safety intervention, and appropriate supervisory and administrative staff, shall conduct a debriefing session that includes, at a minimum, all of the following:

(a) Discussion of the emergency safety situation that required personal restraint or seclusion, including a discussion of precipitating factors that led up to the situation.

(b) Alternative techniques that might have prevented the use of personal restraint or seclusion.

(c) The procedures, if any, that child caring institution staff are to implement to prevent a recurrence of the use of personal restraint or seclusion.

(d) The outcome of the emergency safety intervention, including any injury that may have resulted from the use of personal restraint or seclusion.

(13) The child caring institution staff shall document in the minor child's record that both debriefing sessions took place and shall include the names of staff who were present for the debriefings, names of staff that were excused from the debriefings, and changes to the minor child's treatment plan that result from the debriefings.

(14) Each child caring institution subject to this section and sections 2c and 2d shall report each serious occurrence to the state agency licensing the child caring institution. The state agency licensing the child caring institution shall make the reports available to the designated state protection and advocacy system upon request of the designated state protection and advocacy system. Serious occurrences to be reported include a minor child's death, a serious injury to a minor child, and a minor child's suicide attempt. Staff shall report any serious occurrence involving a minor child by no later than close of business of the next business day after a serious occurrence. The report shall include the name of the minor child involved in the serious occurrence, a description of the occurrence, and the name, street address, and telephone number of the child caring institution. The child caring institution shall notify the minor child's parent or legal guardian and the appropriate state or local government agency that has responsibility for the minor child if the minor child is under the supervision of the child caring institution as a result of an order of commitment by the family division of circuit court to a state institution or otherwise as soon as possible and not later than 24 hours after the serious occurrence. Staff shall document in the minor child's record that the serious occurrence was reported to both the state agency licensing the child caring institution and the state-designated protection and advocacy system, including the name of the person to whom notification of the incident was reported. A copy of the report shall be maintained in the minor child's record, as well as in the incident and accident report logs kept by the child caring institution.

(15) Each child caring institution subject to this section and sections 2c and 2d shall maintain a record of the incidences in which personal restraint or seclusion was used for all minor children. The record shall include all of the following information:

(a) Whether personal restraint or seclusion was used.

- (b) The setting, unit, or location in which personal restraint or seclusion was used.
- (c) Staff who initiated the process.
- (d) The duration of each use of personal restraint or seclusion.
- (e) The date, time, and day of the week restraint or seclusion was initiated.
- (f) Whether injuries were sustained by the minor child or staff.
- (g) The age and gender of the minor child.

(16) Each child caring institution subject to this section and sections 2c and 2d shall submit a report annually to the state agency that licenses the child caring institution containing the aggregate data from the record of incidences for each 12-month period as directed by the state licensing agency. The state licensing agency shall prepare reporting forms to be used by the child caring institution, shall aggregate the data collected from each child caring institution, and shall annually report the data to each child caring institution and the state-designated protection and advocacy system.

History: Add. 2004, Act 531, Imd. Eff. Jan. 3, 2005.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.113 Inspection of child care organizations; contract; provisional license; investigation and certification of foster family home or group home; inspection reports; final determination as to license; report of findings; license limitations.

Sec. 3. (1) The rules promulgated by the department under this act shall be used by the department of community health, the bureau of fire services, and local authorities in the inspection of and reporting on child care organizations covered by this act. The inspection of the health and fire safety of child care organizations shall be completed by department staff or by the department of community health, the bureau of fire services, or local authorities upon request of the department, or pursuant to subsection (2).

(2) If an inspection is not conducted pursuant to subsection (1), a person owning or operating or who proposes to own or operate a child care organization may enter a contract with a local authority or other person qualified to conduct an inspection pursuant to subsection (1) and pay for that inspection after an inspection is completed pursuant to this subsection. A person may receive a provisional license if the proposed child care organization passes the inspection, and the other requirements of this act are met.

(3) The rules promulgated by the department for foster family homes and foster family group homes shall be used by a licensed child placing agency or an approved governmental unit when investigating and certifying a foster family home or a foster family group home.

(4) Inspection reports completed by state agencies, local authorities, and child placing agencies shall be furnished to the department and shall become a part of its evaluation for licensing of organizations covered by this act. After careful consideration of the reports and consultation where necessary, the department shall assume responsibility for the final determination of the issuance, denial, revocation, or provisional nature of licenses issued to nongovernmental organizations. A report of findings shall be furnished to the licensee. A license shall be issued to a specific person or organization at a specific location, shall be nontransferable, and shall remain the property of the department.

History: 1973, Act 116, Eff. Mar. 29, 1974;—Am. 1980, Act 32, Imd. Eff. Mar. 10, 1980;—Am. 1980, Act 232, Imd. Eff. July 20, 1980;—Am. 2006, Act 206, Imd. Eff. June 19, 2006.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.113a Visiting child at child care center or day care center; effect of court order.

Sec. 3a. (1) A parent or legal guardian of a child at a child care center or day care center may visit the child at the center at any time.

(2) A parent or legal guardian who wishes to enroll a child at a child care center or day care center may visit the center before the child's enrollment at the times the center establishes.

(3) This section shall not be construed to permit parenting time with a child in violation of a court order.

History: Add. 1986, Act 140, Imd. Eff. July 1, 1986;—Am. 1997, Act 165, Eff. Mar. 31, 1998.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.113b Smoking prohibited; “smoke” defined.

Sec. 3b. (1) An individual shall not smoke in a child caring institution or child care center or on real property that is under the control of a child caring institution or child care center and upon which the child caring institution or child care center is located, including other related buildings.

(2) As used in this section, “smoke” means that term as defined in section 12601 of the Public Health Code, Act No. 368 of the Public Acts of 1978, being section 333.12601 of the Michigan Compiled Laws.

History: Add. 1993, Act 211, Imd. Eff. Oct. 22, 1993.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.113c Smoking on premises of family child care home during hours of operation prohibited; notice to parents of smoking during other hours; definitions.

Sec. 3c. (1) An individual shall not smoke on the premises of a family child care home during the hours of operation of the family child care home. The operator of a family child care home may permit smoking on the premises during a period other than the hours of operation of that family child care home if the operator has provided to a parent or legal guardian of each child participating in a family child care home activity notice that smoking on the premises occurs or may occur when the family child care home is not in operation.

(2) As used in this section and section 3d:

(a) “Child” means an individual less than 18 years of age who is not related to an adult member of the family child care home or group child care home operator.

(b) “Smoke” and “smoking” mean those terms as defined in section 12601 of the public health code, 1978 PA 368, MCL 333.12601.

History: Add. 1993, Act 219, Eff. Apr. 1, 1994;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.113d Smoking on premises of group child care home during hours of operation prohibited; posting notice; notice to parents of smoking during other hours.

Sec. 3d. (1) An individual shall not smoke on the premises of a group child care home during the hours of operation of the group child care home. The operator of a group child care home shall conspicuously post on the premises a notice that specifies that smoking on the premises is prohibited during the hours of operation of the group child care home.

(2) A group child care home operator may permit smoking on the premises during a period other than the hours of operation of that group child care home if the operator has provided to a parent or legal guardian of each child participating in a group child care home activity notice that smoking on the premises occurs or may occur when the group child care home is not in operation.

History: Add. 1993, Act 218, Eff. Apr. 1, 1994;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.113e Criminal history check required; posting notice; rules.

Sec. 3e. The operator of a child care center or child caring institution shall conspicuously post on the premises a notice stating whether or not that child care center or child caring institution requires a criminal history check on its employees or volunteers. The department shall promulgate rules to implement this section under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: Add. 2002, Act 717, Eff. Mar. 31, 2003;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.113f Child care organization receiving notice of special investigation classified as high risk; notification to parent or legal guardian; requirements; noncompliance; determination of substantial rule violations; availability of information to public; exceptions; "special investigation" defined.

Sec. 3f. (1) Except as provided in subsection (6), within 24 hours after a child care organization receives notice that a special investigation that the department classifies as high risk is being conducted, the child care organization shall make a good faith effort to make oral notification to each parent or legal guardian of 1 or more of the following:

(a) Children who were under the child care organization's care at the site and the time the incident being investigated occurred.

(b) If the individual being investigated is still present at the child care organization at the time of the investigation, children who have or will come into contact with the individual being investigated as long as that individual is present at the child care organization.

(2) The child care organization shall send written notification within 1 business day after the initial good faith attempt under subsection (1) at oral notification. For the purpose of this subsection, written notification shall be given by 1 of the following:

(a) Mail service.

(b) Facsimile transmission.

(c) Electronic mail.

(3) If the department determines that a child care organization is not complying with either notification requirement in subsection (1) or (2), the department may suspend the child care organization's license issued under this act pending review.

(4) If, upon completion of the special investigation described in subsection (1), the department makes a determination that there are no substantiated rule violations, the department shall provide the child care organization with written notification of that determination that the child care organization may share with the parents or legal guardians of the children in the child care organization's care who received the notification required under subsections (1) and (2).

(5) The department shall make the information provided in subsection (4) available to the public on the department website.

(6) This section does not apply to a child caring institution, child placing agency, foster family home, or foster family group home.

(7) For the purpose of this section, "special investigation that the department classifies as high risk" means an investigation in which the department becomes aware that 1 or more of the conditions listed in section 8(3)(a) to (c) of the child protection law, 1975 PA 238, MCL 722.628, exist.

History: Add. 2008, Act 15, Eff. June 1, 2008.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.114 Consultation and assistance to organizations.

Sec. 4. The department shall provide consultation to organizations covered by this act to assist them in meeting the requirements of this act and the rules promulgated under this act. The department shall offer assistance, training, and education, within fiscal limitations, upon request, in developing methods for the improvement of service.

History: 1973, Act 116, Eff. Mar. 29, 1974;—Am. 1980, Act 232, Imd. Eff. July 20, 1980.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.115 License or certificate of registration required; application; forms; investigations; on-site visit; issuance or renewal of license; issuance of certificate of registration; certifying compliance, services, and facilities; conditions; orientation session; limitations on certificate; investigation and certification of foster family home or group home; placement of children in foster family home, family group home, unlicensed residence, adult foster care family home, or adult foster care small group home; certification;

supervisory responsibility; records; exceptions; receipt of completed application; issuance of license within certain period of time; inspections; report; criminal history check or criminal records check; definitions.

Sec. 5. (1) A person, partnership, firm, corporation, association, or nongovernmental organization shall not establish or maintain a child care organization unless licensed or registered by the department. Application for a license or certificate of registration shall be made on forms provided, and in the manner prescribed, by the department. Before issuing or renewing a license, the department shall investigate the applicant's activities and proposed standards of care and shall make an on-site visit of the proposed or established organization. If the department is satisfied as to the need for a child care organization, its financial stability, the applicant's good moral character, and that the services and facilities are conducive to the welfare of the children, the department shall issue or renew the license. If a county juvenile agency as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622, certifies to the department that it intends to contract with an applicant for a new license, the department shall issue or deny the license within 60 days after it receives a complete application as provided in section 5b.

(2) The department shall issue a certificate of registration to a person who has successfully completed an orientation session offered by the department and who certifies to the department that the family child care home has complied with and will continue to comply with the rules promulgated under this act and will provide services and facilities, as determined by the department, conducive to the welfare of children. The department shall make available to applicants for registration an orientation session regarding this act, the rules promulgated under this act, and the needs of children in family child care before issuing a certificate of registration. The department shall issue a certificate of registration to a specific person at a specific location. A certificate of registration is nontransferable and remains the property of the department. Within 90 days after initial registration, the department shall make an on-site visit of the family child care home.

(3) The department may authorize a licensed child placing agency or an approved governmental unit to investigate a foster family home or a foster family group home according to subsection (1) and to certify that the foster family home or foster family group home meets the licensing requirements prescribed by this act. Before certifying to the department that a foster family home or foster family group home meets the licensing requirements prescribed by this act, the licensed child placing agency or approved governmental unit shall receive and review a medical statement for each member of the household indicating that he or she does not have a known condition that would affect the care of a foster child. The medical statement required under this section shall be signed and dated by a physician licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, a physician's assistant licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, or a certified nurse practitioner licensed as a registered professional nurse under part 172 of the public health code, 1978 PA 368, MCL 333.17201 to 333.17242, who has been issued a specialty certification as a nurse practitioner by the board of nursing under section 17210 of the public health code, 1978 PA 368, MCL 333.17210, within the 12 months immediately preceding the date of the initial evaluation. This subsection does not require new or additional third party reimbursement or worker's compensation benefits for services rendered. A foster family home or a foster family group home shall be certified for licensing by the department by only 1 child placing agency or approved governmental unit. Other child placing agencies may place children in a foster family home or foster family group home only upon the approval of the certifying agency or governmental unit.

(4) The department may authorize a licensed child placing agency or an approved governmental unit to place a child who is 16 or 17 years of age in his or her own unlicensed residence, or in the unlicensed residence of an adult who has no supervisory responsibility for the child, if a child placing agency or governmental unit retains supervisory responsibility for the child.

(5) A licensed child placing agency, child caring institution, and an approved governmental unit shall provide the state court administrative office and a local foster care review board established under 1984 PA 422, MCL 722.131 to 722.139a, those records requested pertaining to children in foster care placement for more than 6 months.

(6) The department may authorize a licensed child placing agency or an approved governmental unit to place a child who is 16 or 17 years old in an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, if a licensed child placing agency or approved governmental unit retains supervisory responsibility for the child and certifies to the department all of the following:

- (a) The placement is in the best interests of the child.
- (b) The child's needs can be adequately met by the adult foster care family home or small group home.
- (c) The child will be compatible with other residents of the adult foster care family home or small group

home.

(d) The child placing agency or approved governmental unit will periodically reevaluate the placement of a child under this subsection to determine that the criteria for placement in subdivisions (a) through (c) continue to be met.

(7) On an exception basis, the director of the department, or his or her designee, may authorize a licensed child placing agency or an approved governmental unit to place an adult in a foster family home if a licensed child placing agency or approved governmental unit certifies to the department all of the following:

(a) The adult is a person with a developmental disability as defined by section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a person who is otherwise neurologically disabled and is also physically limited to a degree that requires complete physical assistance with mobility and activities of daily living.

(b) The placement is in the best interests of the adult and will not adversely affect the interests of the foster child or children residing in the foster family home.

(c) The identified needs of the adult can be met by the foster family home.

(d) The adult will be compatible with other residents of the foster family home.

(e) The child placing agency or approved governmental unit will periodically reevaluate the placement of an adult under this subsection to determine that the criteria for placement in subdivisions (a) through (d) continue to be met and document that the adult is receiving care consistent with the administrative rules for a child placing agency.

(8) On an exception basis, the director of the department, or his or her designee, may authorize a licensed child placing agency or an approved governmental unit to place a child in an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, if the licensed child placing agency or approved governmental unit certifies to the department all of the following:

(a) The placement is in the best interests of the child.

(b) The placement has the concurrence of the parent or guardian of the child.

(c) The identified needs of the child can be met adequately by the adult foster care family home or small group home.

(d) The child's psychosocial and clinical needs are compatible with those of other residents of the adult foster care family home or small group home.

(e) The clinical treatment of the child's condition is similar to that of the other residents of the adult foster care family home or small group home.

(f) The child's cognitive level is consistent with the cognitive level of the other residents of the adult foster care family home or small group home.

(g) The child is neurologically disabled and is also physically limited to such a degree as to require complete physical assistance with mobility and activities of daily living.

(h) The child placing agency or approved governmental unit will periodically reevaluate the placement of a child under this subsection to determine that the criteria for placement in subdivisions (a) to (g) continue to be met.

(9) Except as provided in subsection (1) and section 5b, the department shall issue an initial or renewal license or registration under this act for child care centers, group child care homes, and family child care homes not later than 6 months after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of this state. If the application is considered incomplete by the department, the department shall notify the applicant in writing or make notice electronically available within 30 days after receipt of the incomplete application, describing the deficiency and requesting additional information. This subsection does not affect the time period within which an on-site visit to a family child care home shall be made. If the department identifies a deficiency or requires the fulfillment of a corrective action plan, the 6-month period is tolled until either of the following occurs:

(a) Upon notification by the department of a deficiency, until the date the requested information is received by the department.

(b) Upon notification by the department that a corrective action plan is required, until the date the department determines the requirements of the corrective action plan have been met.

(10) The determination of the completeness of an application is not an approval of the application for the license and does not confer eligibility on an applicant determined otherwise ineligible for issuance of a license.

(11) Except as provided in subsection (1) and section 5b, if the department fails to issue or deny a license or registration to a child care center, group child care home, or family child care home within the time required by this section, the department shall return the license or registration fee and shall reduce the license

or registration fee for the applicant's next renewal application, if any, by 15%. Failure to issue or deny a license to a child care center, group child care home, or family child care home within the time period required under this section does not allow the department to otherwise delay the processing of the application. A completed application shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of an application based on the fact that the application fee was refunded or discounted under this subsection.

(12) If, on a continual basis, inspections performed by a local health department delay the department in issuing or denying licenses or registrations for child care centers, group day care homes, and family child care homes under this act within the 6-month period, the department may use department staff to complete the inspections instead of the local health department causing the delays.

(13) Beginning October 1, 2008, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with human services and children's issues. The director shall include all of the following information regarding applications for licenses and registrations only for child care centers, group child care homes, and family child care homes filed under this act in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 6-month time period described in subsection (9).

(b) The number of applications requiring a request for additional information.

(c) The number of applications rejected.

(d) The number of licenses and registrations not issued within the 6-month period.

(e) The average processing time for initial and renewal licenses and registrations granted after the 6-month period.

(14) Except as provided in section 5c(8), the department shall not issue to or renew the license of a child care center or day care center under this act without requesting a criminal history check and criminal records check as required by section 5c. If a criminal history check or criminal records check performed under section 5c or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for a license under this act has been convicted of a listed offense, the department shall not issue a license to that applicant. If a criminal history check or criminal records check performed under section 5c or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for renewal of a license under this act has been convicted of a listed offense, the department shall not renew that license. If a criminal history check or criminal records check performed under section 5c or information obtained as a result of notification from the department of state police under section 5k reveals that a current licensee has been convicted of a listed offense, the department shall revoke the license of that licensee.

(15) Except as provided in section 5f(13), the department shall not issue or renew a certificate of registration to a family child care home or a license to a group child care home under this act without requesting a criminal history check and criminal records check as required by sections 5f and 5g. If a criminal history check or criminal records check performed under section 5f or 5g or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for a certificate of registration or license under this act or a person over 18 years of age residing in that applicant's home has been convicted of a listed offense, the department shall not issue a certificate of registration or license to that applicant. If a criminal history check or criminal records check performed under section 5f or 5g or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for renewal of a certificate of registration or license under this act or a person over 18 years of age residing in that applicant's home has been convicted of a listed offense, the department shall not renew a certificate of registration or license to that applicant. If a criminal history check or criminal records check performed under section 5f or 5g or information obtained as a result of notification from the department of state police under section 5k reveals that a current registrant or licensee under this act or a person over 18 years of age residing in that registrant's or licensee's home has been convicted of a listed offense, the department shall revoke that registrant's certificate of registration or licensee's license.

(16) Except as provided in section 5h(7), the department shall not issue or renew a license to operate a foster family home or foster family group home under this act without requesting a criminal history check and criminal records check as required by sections 5h and 5j. If a criminal history check or criminal records check performed under section 5h or 5j or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for a license to operate a foster family home or foster family group home under this act or a person over 18 years of age residing in that applicant's home has been convicted of a listed offense, the department shall not issue a license to that applicant. If a criminal history

check or criminal records check performed under section 5h or 5j or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for renewal of a license to operate a foster family home or foster family group home under this act or a person over 18 years of age residing in that applicant's home has been convicted of a listed offense, the department shall not renew a license to that applicant. If a criminal history check or criminal records check performed under section 5h or 5j or information obtained as a result of notification from the department of state police under section 5k reveals that a current licensee under this act of a foster family home or foster family group home or a person over 18 years of age residing in that licensee's foster family home or foster family group home has been convicted of a listed offense, the department shall revoke that licensee's license.

(17) As used in this section:

(a) "Completed application" means an application complete on its face and submitted with any applicable licensing or registration fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state. A completed application does not include a health inspection performed by a local health department.

(b) "Good moral character" means that term as defined in and determined under 1974 PA 381, MCL 338.41 to 338.47.

(c) "Member of the household" means any individual, other than a foster child, who resides in a foster family home or foster family group home on an ongoing or recurrent basis.

History: 1973, Act 116, Eff. Mar. 29, 1974;—Am. 1974, Act 191, Imd. Eff. July 2, 1974;—Am. 1978, Act 309, Imd. Eff. July 10, 1978;—Am. 1980, Act 32, Imd. Eff. Mar. 10, 1980;—Am. 1980, Act 232, Imd. Eff. July 20, 1980;—Am. 1980, Act 498, Imd. Eff. Jan. 21, 1981;—Am. 1980, Act 510, Imd. Eff. Jan. 26, 1981;—Am. 1981, Act 126, Imd. Eff. July 23, 1981;—Am. 1982, Act 329, Imd. Eff. Dec. 14, 1982;—Am. 1984, Act 421, Imd. Eff. Dec. 28, 1984;—Am. 1986, Act 169, Imd. Eff. July 7, 1986;—Am. 1989, Act 72, Imd. Eff. June 16, 1989;—Am. 1991, Act 162, Imd. Eff. Dec. 9, 1991;—Am. 1995, Act 81, Imd. Eff. June 15, 1995;—Am. 1998, Act 34, Imd. Eff. Mar. 18, 1998;—Am. 1998, Act 519, Imd. Eff. Jan. 12, 1999;—Am. 2004, Act 315, Eff. Oct. 1, 2007;—Am. 2005, Act 133, Eff. Jan. 1, 2006;—Am. 2006, Act 51, Imd. Eff. Mar. 9, 2006;—Am. 2006, Act 580, Imd. Eff. Jan. 3, 2007;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007;—Am. 2007, Act 218, Eff. Jan. 1, 2008.

Constitutionality: The First and Fourteenth Amendments of the United States Constitution do not prevent the state from compelling the defendants to conform to the licensure requirements of the childcare organization act. Department of Social Services v Emmanuel Baptist Preschool, 434 Mich 380; 455 NW2d 1 (1990).

Compiler's note: For transfer of powers and duties of child welfare licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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Administrative rules: R 400.1 et seq.; R 400.1301 et seq.; R 400.4101 et seq.; R 400.5101 et seq.; R 400.9101 et seq.; R 400.11101 et seq.; and R 400.12101 et seq. the Michigan Administrative Code.

722.115a Providing records to children's ombudsman.

Sec. 5a. A child placing agency shall provide the children's ombudsman created in section 3 of the children's ombudsman act with those records requested by the ombudsman pertaining to a matter under investigation by the ombudsman.

History: Add. 1994, Act 205, Eff. Jan. 1, 1995.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.115b Contract with license applicant; review of application; issuance or denial of license; county juvenile agency as party to proceeding.

Sec. 5b. (1) If a county juvenile agency as defined in section 2 of the county juvenile agency act certifies that it intends to contract with a license applicant as provided in section 5(1), the department shall review the application and advise the applicant and the county juvenile agency within 10 days after receiving the application what further information or material is necessary to complete the application.

(2) If the department fails to issue or deny the license within 60 days after receiving the information it determined was necessary to complete the application, the county juvenile agency or the applicant may bring an action for mandamus to require the department to issue or deny the license.

(3) The county juvenile agency is a party for purposes of any hearing, review, or other proceeding on a

license application described in this section or section 5(1) for which the county juvenile agency certifies to the department that it intends to contract with the applicant. The county juvenile agency or applicant may challenge the department's determination concerning what further information or material is necessary to complete the application.

History: Add. 1998, Act 519, Imd. Eff. Jan. 12, 1999.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.115c Applicant for child care center or day care center license; criminal history check and criminal records check; requirements; fee; definitions.

Sec. 5c. (1) Except as provided in subsection (8), when a person, partnership, firm, corporation, association, or nongovernmental organization applies for or to renew a license for a child care center or day care center under section 5, the department shall request the department of state police to perform both of the following on the person or each partner, officer, or manager of the child care center or day care center applying for the license:

(a) Conduct a criminal history check on the person.

(b) Conduct a criminal records check through the federal bureau of investigation on the person.

(2) Except as provided in subsection (7), each person applying for a license to operate a child care center or day care center shall give written consent at the time of the license application for the department of state police to conduct the criminal history check and criminal records check required under this section. The department shall require the person to submit his or her fingerprints to the department of state police for the criminal history check and criminal records check described in subsection (1).

(3) The department shall request a criminal history check and criminal records check required under this section on a form and in the manner prescribed by the department of state police.

(4) Within a reasonable time after receiving a complete request by the department for a criminal history check on a person under this section, the department of state police shall conduct the criminal history check and provide a report of the results to the department. The report shall contain any criminal history record information on the person maintained by the department of state police.

(5) Within a reasonable time after receiving a proper request by the department for a criminal records check on a person under this section, the department of state police shall initiate the criminal records check. After receiving the results of the criminal records check from the federal bureau of investigation, the department of state police shall provide a report of the results to the department.

(6) The department of state police may charge the department a fee for a criminal history check or a criminal records check required under this section that does not exceed the actual and reasonable cost of conducting the check. The department may pass along to the licensee or applicant the actual cost or fee charged by the department of state police for performing a criminal history check or a criminal records check required under this section.

(7) When a person, partnership, firm, corporation, association, or nongovernmental organization applies for or renews a license under section 5 for a child care center or day care center that is established and operated by an intermediate school board, the board of a local school district, or by the board or governing body of a state-approved nonpublic school, the criminal history check and criminal records check required under subsection (1) shall be performed in compliance with the provisions of sections 1230 to 1230h of the revised school code, 1976 PA 451, MCL 380.1230 to 380.1230h. Before issuing or renewing a license to a child care center or day care center described in this subsection, the department shall verify that the intermediate school board, the board of a local school district, or the board or governing body of a state-approved nonpublic school has obtained the required criminal history checks and criminal records checks.

(8) Beginning January 1, 2006, if a person, partnership, firm, corporation, association, or nongovernmental organization applying to renew a license to operate a child care center or day care center has previously undergone a criminal history check and criminal records check required under subsection (1) and has remained continuously licensed after the criminal history check and criminal records check have been performed, that person, partnership, firm, corporation, association, or nongovernmental organization is not required to submit to another criminal history check or criminal records check upon renewal of the license obtained under section 5.

(9) As used in this section and sections 5, 5d, 5e, 5f, and 5g:

(a) "Criminal history record information" means that term as defined in section 1a of 1925 PA 289, MCL

28.241a.

(b) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

History: Add. 2005, Act 133, Eff. Jan. 1, 2006;—Am. 2006, Act 580, Imd. Eff. Jan. 3, 2007.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.115d Offer of employment to person at child care center or day care center; criminal history check and criminal records check; current employees; cost.

Sec. 5d. (1) Before a child care center or day care center makes an offer of employment to a person or allows a person to regularly and continuously work under contract at the child care center or day care center, the child care center or day care center shall perform a criminal history check on that person using the department of state police's internet criminal history access tool (ICHAT).

(2) If a search of the department of state police's ICHAT reveals that the person described in subsection (1) has been convicted of a listed offense, the child care center or day care center shall not make an offer of employment to that person or allow that person to regularly and continuously work under contract at the child care center or day care center. If a search of the department of state police's ICHAT reveals that a current employee has been convicted of a listed offense, the child care center or day care center shall not continue to employ that person. If a search of the department of state police's ICHAT reveals that a person who regularly and continuously works under contract at the child care center or day care center has been convicted of a listed offense, the child care center or day care center shall not allow that person to regularly or continuously work under contract at the child care center or day care center.

(3) Not later than 1 year after the effective date of the amendatory act that added this section, the child care center or day care center shall conduct a criminal history check on all current employees using the department of state police's ICHAT.

(4) A child care center or day care center may pass along the actual cost of a search of the department of state police's ICHAT to the employee or applicant on whom the search is being performed.

History: Add. 2005, Act 133, Eff. Jan. 1, 2006.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.115e Arraignment of licensee or employee; report; crimes; licensee or employee not convicted of crime; deletion of information from records; notice requirements.

Sec. 5e. (1) A child care center or day care center licensee shall report to the department and an employee of a child care center or day care center shall report to that child care center or day care center within 3 business days after he or she has been arraigned for 1 or more of the following crimes:

(a) Any felony.

(b) Any of the following misdemeanors:

(i) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.

(ii) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.

(iii) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.

(iv) A misdemeanor violation of section 7410 of the public health code, 1978 PA 368, MCL 333.7410.

(v) A violation of section 115, 141a, 145a, 335a, or 359 of the Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a, 750.145a, 750.335a, and 750.359, or a misdemeanor violation of section 81, 81a, or 145d of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and 750.145d.

(vi) A misdemeanor violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701.

(vii) Any misdemeanor that is a listed offense.

(c) A violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(2) A person who violates subsection (1) is guilty of a crime as follows:

(a) If the person violates subsection (1) and the crime involved in the violation is a misdemeanor that is a

listed offense or is a felony, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(b) If the person violates subsection (1) and the crime involved in the violation is a misdemeanor that is not a listed offense, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(3) The department shall delete from the licensee's records all information relating to an arraignment required to be reported under subsection (1) if the department receives documentation that the licensee is subsequently not convicted of any crime after the completion of judicial proceedings resulting from that arraignment.

(4) A child care center or day care center shall delete from the employee's records all information relating to an arraignment required to be reported under subsection (1) if it receives documentation that the employee is subsequently not convicted of any crime after the completion of judicial proceedings resulting from that arraignment.

(5) Not later than 30 days after the effective date of the amendatory act that added this section, the department shall inform all licensees and applicants for licenses of the requirement under this section to report when he or she is arraigned for certain crimes and the penalty for not reporting.

(6) Not later than 30 days after the effective date of the amendatory act that added this section, a child care center or day care center shall inform all current employees and all persons who work regularly and continuously under contract at the child care center or day care center of the requirement under this section to report when he or she is arraigned for certain crimes and the penalty for not reporting.

(7) At the time a child care center or day care center makes an offer of employment to a person or allows a person to regularly and continuously work under contract at the child care center or day care center, the child care center or day care center shall notify that person of the requirement under this section to report when he or she is arraigned for certain crimes and the penalty for not reporting.

History: Add. 2005, Act 133, Eff. Jan. 1, 2006.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.115f Operation of family or group child care home; conduct of criminal history check and criminal records check by department of state police; fee; arraignment of registrant or licensee for certain crimes; report required; violation; penalty; deletion of arraignment information from records; notice; criminal history check and criminal records check on current licensees and registrants; exception.

Sec. 5f. (1) Except as provided in subsection (13), when a person applies for or to renew a certificate of registration to operate a family child care home or a license to operate a group child care home under section 5, the department shall request the department of state police to perform both of the following on that person:

(a) Conduct a criminal history check on the person.

(b) Conduct a criminal records check through the federal bureau of investigation on the person.

(2) Each person applying for a certificate of registration to operate a family child care home or a license to operate a group child care home shall give written consent at the time of application for the department of state police to conduct a criminal history check and a criminal records check required under this section. The department shall require the person to submit his or her fingerprints to the department of state police for the criminal history check and criminal records check described in subsection (1).

(3) The department shall request a criminal history check and criminal records check required under this section on a form and in the manner prescribed by the department of state police.

(4) Within a reasonable time after receiving a complete request by the department for a criminal history check on a person under this section, the department of state police shall conduct the criminal history check and provide a report of the results to the department. The report shall contain any criminal history record information on the person maintained by the department of state police.

(5) Within a reasonable time after receiving a proper request by the department for a criminal records check on a person under this section, the department of state police shall initiate the criminal records check. After receiving the results of the criminal records check from the federal bureau of investigation, the department of state police shall provide a report of the results to the department.

(6) The department of state police may charge the department a fee for a criminal history check or a criminal records check required under this section that does not exceed the actual and reasonable cost of

conducting the check. The department may pass along to the registrant, licensee, or applicant the actual cost or fee charged by the department of state police for performing a criminal history check or a criminal records check required under this section.

(7) A person to whom a certificate of registration or license has been issued under this act shall report to the department within 3 business days after he or she has been arraigned for 1 or more of the following crimes and within 3 business days after he or she knows or should reasonably know that an employee or a person over 18 years of age residing in the home has been arraigned for 1 or more of the following crimes:

(a) Any felony.

(b) Any of the following misdemeanors:

(i) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.

(ii) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.

(iii) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.

(iv) A misdemeanor violation of section 7410 of the public health code, 1978 PA 368, MCL 333.7410.

(v) A violation of section 115, 141a, 145a, 335a, or 359 of the Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a, 750.145a, 750.335a, and 750.359, or a misdemeanor violation of section 81, 81a, or 145d of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and 750.145d.

(vi) A misdemeanor violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701.

(vii) Any misdemeanor that is a listed offense.

(c) A violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(8) A person who violates subsection (7) is guilty of a crime as follows:

(a) If the person violates subsection (7) and the crime involved in the violation is a misdemeanor that is a listed offense or is a felony, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(b) If the person violates subsection (7) and the crime involved in the violation is a misdemeanor that is not a listed offense, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(9) The department shall delete from the registrant's or licensee's records all information relating to an arraignment required to be reported under this section if the department receives documentation that the person arraigned for the crime is subsequently not convicted of any crime after the completion of judicial proceedings resulting from that arraignment.

(10) Not later than January 31, 2006, the department shall inform all persons currently issued a certificate of registration or license and all applicants for a certificate of registration or license of the requirement to report certain arraignments as required in this section and the penalty for not reporting those arraignments.

(11) At the time the department issues a certificate of registration to operate a family child care home or a license to operate a group child care home under this act, the department shall notify the registrant or licensee of the requirement to report certain arraignments as required in this section and the penalty for not reporting those arraignments.

(12) Not later than January 1, 2007, the department shall conduct a criminal history check and criminal records check on all persons currently issued a certificate of registration under this act to operate a family child care home or a license under this act to operate a group child care home.

(13) Beginning January 1, 2006, if a person applying to renew a certificate of registration to operate a family child care home under section 5 or a license to operate a group child care home under section 5 has previously undergone a criminal history check and criminal records check required under subsection (1) and has continuously maintained a certificate of registration to operate a family child care home or license to operate a group child care home after the criminal history check and criminal records check have been performed, that person is not required to submit to another criminal history check or criminal records check upon renewal of the certificate of registration or license obtained under section 5.

History: Add. 2005, Act 128, Eff. Jan. 1, 2006;—Am. 2006, Act 580, Imd. Eff. Jan. 3, 2007;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.115g Performance of criminal history check.

Sec. 5g. (1) When a person applies for a certificate of registration to operate a family child care home or a license to operate a group child care home under section 5, the department shall perform a criminal history check with the department of state police on all persons over 18 years of age residing in the home in which the family child care home or group child care home is operated. This section does not apply to a person residing in the home for a period of not more than 14 days.

(2) Not later than January 1, 2007, the department shall perform a criminal history check on all persons over 18 years of age residing in the home in which a family child care home or group child care home is currently operated.

(3) If a criminal history check reveals that a person over 18 years of age residing in the home has been convicted of a listed offense, the department shall not issue a certificate of registration or license to the applicant, shall not renew a certificate of registration to the registrant or license to the licensee applying for renewal, or shall revoke a current registrant's certificate of registration or current licensee's license.

History: Add. 2005, Act 128, Eff. Jan. 1, 2006;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.115h Application for or to renew license to operate foster family home or foster family group home; criminal history check required; procedures.

Sec. 5h. (1) Except as provided in subsection (7), when a person applies for or to renew a license to operate a foster family home or foster family group home under this act, the department shall request the department of state police to perform both of the following on that person:

(a) Conduct a criminal history check on the person.

(b) Conduct a criminal records check through the federal bureau of investigation on the person.

(2) Each person applying for a license to operate a foster family home or foster family group home shall give written consent at the time of application for the department of state police to conduct a criminal history check and a criminal records check required under this section. The department shall require the person to submit his or her fingerprints to the department of state police for the criminal history check and criminal records check described in subsection (1).

(3) The department shall request a criminal history check and criminal records check required under this section on a form and in the manner prescribed by the department of state police.

(4) Within a reasonable time after receiving a complete request by the department for a criminal history check on a person under this section, the department of state police shall conduct the criminal history check and provide a report of the results to the department. The report shall contain any criminal history record information on the person maintained by the department of state police.

(5) Within a reasonable time after receiving a proper request by the department for a criminal records check on a person under this section, the department of state police shall initiate the criminal records check. After receiving the results of the criminal records check from the federal bureau of investigation, the department of state police shall provide a report of the results to the department.

(6) The department of state police may charge the department a fee for a criminal history check or a criminal records check required under this section that does not exceed the actual and reasonable cost of conducting the check.

(7) Beginning January 1, 2008, if a person applying to renew a license to operate a foster family home or foster family group home under this act has previously undergone a criminal history check and criminal records check required under subsection (1) and has continuously maintained a license to operate a foster family home or foster family group home under this act after the criminal history check and criminal records check have been performed, that person is not required to submit to another criminal history check or criminal records check upon renewal of the license obtained to operate a foster family home or foster family group home under this act.

(8) The department shall provide written notice to all persons currently issued a license to operate a foster family home or foster family group home and all applicants applying for a license to operate a foster family home or foster family group home, that upon renewal all licensees will be required to submit fingerprints and undergo a criminal history check and a criminal records check before their licenses will be renewed. The notice provided under this subsection shall include information to the licensee that he or she may submit his or her fingerprints in advance of the time his or her license is up for renewal.

History: Add. 2007, Act 218, Eff. Jan. 1, 2008.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.115i Licensee or resident arraigned for certain crimes; report; violation; penalty; person not convicted; notice.

Sec. 5i. (1) A person to whom a license to operate a foster family home or foster family group home has been issued under this act shall report to the department within 3 business days after he or she has been arraigned for 1 or more of the following crimes and within 3 business days after he or she knows or should reasonably know that a person over 18 years of age residing in the home has been arraigned for 1 or more of the following crimes:

(a) Any felony.

(b) Any of the following misdemeanors:

(i) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.

(ii) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.

(iii) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.

(iv) A misdemeanor violation of section 7410 of the public health code, 1978 PA 368, MCL 333.7410.

(v) A violation of section 115, 141a, 145a, 335a, or 359 of the Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a, 750.145a, 750.335a, and 750.359, or a misdemeanor violation of section 81, 81a, or 145d of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and 750.145d.

(vi) A misdemeanor violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701.

(vii) Any misdemeanor that is a listed offense.

(c) A violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(2) A person who violates subsection (1) is guilty of a crime as follows:

(a) If the person violates subsection (1) and the crime involved in the violation is a misdemeanor that is a listed offense or is a felony, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(b) If the person violates subsection (1) and the crime involved in the violation is a misdemeanor that is not a listed offense, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(3) The department shall delete from the licensee's records all information relating to an arraignment required to be reported under this section if the department receives documentation that the person arraigned for the crime is subsequently not convicted of any crime after the completion of judicial proceedings resulting from that arraignment.

(4) Not later than January 1, 2008, the department shall inform all persons currently issued a license to operate a foster family home or foster family group home and all applicants for a license to operate a foster family home or foster family group home of the requirement to report certain arraignments as required in this section and the penalty for not reporting those arraignments.

(5) At the time the department issues a license to operate a foster family home or foster family group home under this act, the department shall notify the licensee of the requirement to report certain arraignments as required in this section and the penalty for not reporting those arraignments.

History: Add. 2007, Act 218, Eff. Jan. 1, 2008.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.115j Criminal history check performed by department.

Sec. 5j. (1) When a person applies for or to renew a license to operate a foster family home or foster family group home under this act, the department shall perform a criminal history check with the department of state police on all persons over 18 years of age residing in the home in which the foster family home or foster family group home is operated. This section does not apply to a person residing in the home for a period of not more than 14 days.

(2) Not later than January 1, 2009, the department shall perform a criminal history check with the department of state police on all persons over 18 years of age residing in the home in which a foster family home or foster family group home is currently operated.

(3) If a criminal history check reveals that a person over 18 years of age residing in the foster family home or foster family group home has been convicted of a listed offense, the department shall not issue a license to the applicant, shall not renew a license to the licensee applying for renewal, or shall revoke a current licensee's license.

History: Add. 2007, Act 218, Eff. Jan. 1, 2008.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.115k Storage and maintenance of fingerprints; automated fingerprint identification system database.

Sec. 5k. The department of state police shall store and maintain all fingerprints submitted under this act in an automated fingerprint identification system database that provides for an automatic notification at the time a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this act. Upon such notification, the department of state police shall immediately notify the department and the department shall immediately contact the respective child care center, day care center, family child care home, group child care home, licensed child placing agency or approved governmental unit, foster family home, or foster family group home with which that individual is associated. Information in the database maintained under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

History: Add. 2007, Act 218, Eff. Jan. 1, 2008.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.115/ Intentional false report as crime; penalties.

Sec. 5l. A person who intentionally makes a false report to the department regarding a child care organization that causes the department to initiate a special investigation for which the child care organization is required to send notice under section 3f is guilty of a crime as follows:

(a) If the incident reported would not constitute a crime or would constitute a misdemeanor if the report were true, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.

(b) If the incident reported would constitute a felony if the report were true, the person is guilty of a felony punishable by the lesser of the following:

(i) The penalty for the incident falsely reported.

(ii) Imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

History: Add. 2008, Act 15, Eff. June 1, 2008.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.116 Evaluation of local and state government child care organizations; report; state funds.

Sec. 6. Local and state government child care organizations similar to those nongovernmental organizations required to be licensed pursuant to this act shall be evaluated and approved at least once every 2 years, using this act and rules promulgated thereunder for similar nongovernmental organizations licensed under this act. A report of the evaluation shall be furnished to the funding body for each child care organization. Unless child care organizations are approved, or provisionally approved, as meeting the appropriate administrative rules, state funds shall not be appropriated for their continued operation.

History: 1973, Act 116, Eff. Mar. 29, 1974.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.117 Provisional license.

Sec. 7. A provisional license shall be issued to a new organization during the first 6 months of operation. At the end of the 6 months of operation, the department shall either issue a regular license or renew or refuse to renew the provisional license as provided in section 11. A provisional license may be issued to a child care organization which is temporarily unable to conform to the rules. A provisional license shall expire 6 months

from the date of issuance and may be issued not more than 4 times. The issuance of a provisional license shall be contingent upon the submission to the department of an acceptable plan to overcome the deficiency present in the child care organization within the time limitations of the provisional licensing period.

History: 1973, Act 116, Eff. Mar. 29, 1974.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.118 Regular license; duration; reinstatement; contents.

Sec. 8. A regular license shall be effective for 2 years after the date of issuance unless revoked pursuant to section 11 or modified to a provisional status based on evidence of noncompliance with this act or the rules promulgated under this act. The license shall be reinstated biennially on application and approval. A license shall specify in general terms the kind of child care program the licensee may undertake, and the number, and ages of children that can be received and maintained.

History: 1973, Act 116, Eff. Mar. 29, 1974;—Am. 1980, Act 32, Imd. Eff. Mar. 10, 1980;—Am. 1980, Act 232, Imd. Eff. July 20, 1980.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.118a Assessment of foster family home or group home; certification; on-site evaluation.

Sec. 8a. (1) The department shall periodically assess a child care organization's continued compliance with this act and the rules promulgated under this act. The department shall make an on-site evaluation of a child care organization at least once a year.

(2) The department may authorize a licensed child placing agency or an approved governmental unit to periodically assess a licensed foster family home or a licensed foster family group home pursuant to subsection (1) and to certify that the foster family home or the foster family group home continues to comply with this act and the rules promulgated under this act. A periodic assessment of a licensed foster family home or a licensed foster family group home pursuant to this subsection may include an on-site evaluation of the child care organization.

History: Add. 1980, Act 32, Imd. Eff. Mar. 10, 1980.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.118b Regulation of foster family homes or foster family group homes; variance.

Sec. 8b. (1) Upon the recommendation of a local foster care review board under section 7a of 1984 PA 422, MCL 722.137, or of a child placing agency, the department may grant a variance to 1 or more licensing rules or statutes regulating foster family homes or foster family group homes to allow the child and 1 or more siblings to remain or be placed together. If the department determines that such a placement would be in the child's best interests and that the variance from the particular licensing rules or statutes would not jeopardize the health or safety of a child residing in the foster family home or foster family group home, the department may grant the variance.

(2) The department's grant of a variance does not change a private home's licensure status.

History: Add. 1997, Act 165, Eff. Mar. 31, 1998.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.119 Child care center, child caring institution, or child placing agency; presence of staff member prohibited; conditions; unsupervised contact by volunteer prohibited; conditions; documentation that staff member or volunteer not named in central registry; policy regarding supervision of volunteers.

Sec. 9. (1) A staff member shall not be present in a child care center, child caring institution, or child

placing agency if he or she has been convicted of either of the following:

(a) Child abuse or child neglect.

(b) A felony involving harm or threatened harm to an individual within the 10 years immediately preceding the date of hire.

(2) A volunteer shall not have unsupervised contact with children who are in the care of a child care center, child caring institution, or child placing agency if he or she has been convicted of either of the following:

(a) Child abuse or child neglect.

(b) A felony involving harm or threatened harm to an individual within the 10 years immediately preceding the date of offering to volunteer at the child care center, child caring institution, or child placing agency.

(3) Before a staff member or unsupervised volunteer may have contact with a child who is in the care of a child care center, child caring institution, or child placing agency, the staff member or volunteer shall provide the child care center, child caring institution, or child placing agency with documentation from the family independence agency that he or she has not been named in a central registry case as the perpetrator of child abuse or child neglect. For individuals who are employed by or volunteer at a child care center, child caring institution, or child placing agency, the child care center, child caring institution, or child placing agency shall comply with this subsection not later than the date on which that child care center's, child caring institution's, or child placing agency's license is issued or first renewed after the effective date of the amendatory act that added this section. As used in this subsection, "child abuse" and "child neglect" mean those terms as defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622.

(4) Each child care center, child caring institution, or child placing agency shall establish and maintain a policy regarding supervision of volunteers including volunteers who are parents of a child receiving care at the child care center, child caring institution, or child placing agency.

History: Add. 2002, Act 674, Eff. Mar. 31, 2003.

Compiler's note: Former MCL 722.119, which pertained to registration of family day care homes, was repealed by Act 232 of 1980, Imd. Eff. July 20, 1980.

For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.119a Certificate of registration; duration; renewal; contents; assessing compliance; on-site visits.

Sec. 9a. (1) A certificate of registration shall be in force for 3 years unless revoked under section 11. Until September 30, 2007, a renewal certificate of registration shall be issued in the same manner as provided in section 5(2) for initially issuing the certificate, except that an on-site visit of the family child care home and the orientation session are not required. Beginning October 1, 2007, a renewal certificate of registration shall be issued in the same manner as provided in section 5(2), (9), and (11) for the initial issuance of the certificate, except that an on-site visit of the family child care home and the orientation session are not required. The certificate shall state that the registrant may operate a family child care home and the number and the ages of the children that may be received and maintained.

(2) This section does not limit the right or the duty of the department to assess periodically, randomly, or at the time of renewal, the continued compliance with this act and rules promulgated under this act. The department shall make on-site visits as provided in this act to a 10% sample of the family child care homes in each county each year, or when a complaint about a family child care home or registrant is received by the department.

History: Add. 1980, Act 232, Imd. Eff. July 20, 1980;—Am. 2004, Act 315, Eff. Oct. 1, 2007;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.120 Investigation and examination of conditions, books, records, and reports; visits regarding health or fire protection; records; report; forms; confidentiality; disclosure of information; availability of confidential records.

Sec. 10. (1) The department may investigate and examine conditions of a child care organization in which a licensee receives, maintains, or places out children, and may investigate and examine the books and records of the licensee. The licensee shall admit members of the department and furnish all reasonable facilities for

thorough examination of its books, records, and reports. The department of community health, the bureau of fire services, or local authorities, in carrying out the provisions of this act, may visit a child care organization to advise in matters affecting the health or fire protection of children.

(2) A licensee shall keep the records the department prescribes regarding each child in its control and care and shall report to the department, when requested, the facts the department requires with reference to the children upon forms furnished by the department. Except as otherwise provided in this subsection, records regarding children and facts compiled about children and their parents and relatives are confidential and disclosure of this information shall be properly safeguarded by the child care organization, the department, and any other entity in possession of the information. Records that are confidential under this section are available to both of the following:

(a) A standing or select committee or appropriations subcommittee of either house of the legislature having jurisdiction over protective services matters for children, pursuant to section 7 of the child protection law, 1975 PA 238, MCL 722.627.

(b) The children's ombudsman established in section 3 of the children's ombudsman act, 1994 PA 204, MCL 722.923.

History: 1973, Act 116, Eff. Mar. 29, 1974;—Am. 1980, Act 498, Imd. Eff. Jan. 21, 1981;—Am. 1994, Act 205, Eff. Jan. 1, 1995;—Am. 2006, Act 206, Imd. Eff. June 19, 2006.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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Administrative rules: R 400.1 et seq.; R 400.9101 et seq.; R 400.11101 et seq.; and R 400.12101 et seq. of the Michigan Administrative Code.

722.120a Contribution.

Sec. 10a. (1) A child placing agency shall not solicit or accept a contribution from a prospective adoptive parent unless the contribution is equivalent in value to the cost of, and tendered as payment for, an adoption service actually performed for the prospective adoptive parent by the child placing agency.

(2) A child placing agency shall not give or offer to give an individual preferential treatment in connection with an adoption service in return for a contribution from or on behalf of that individual.

(3) As used in this section, "contribution" means the payment of money or donation of goods or services.

History: Add. 1994, Act 243, Eff. July 5, 1994.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.121 Denial, revocation, or refusal to renew license or certificate of registration; modifying provisional status of license; grounds; notice; appeal; hearing; decision; protest; denial of license for noncompliance; complaint by legislative body of city, village, or township; procedure.

Sec. 11. (1) An original license shall not be granted under this act if the issuance of the license would substantially contribute to an excessive concentration of community residential facilities within a city, village, township, or county of this state.

(2) The department may deny, revoke, or refuse to renew a license or certificate of registration of a child care organization when the licensee, registrant, or applicant falsifies information on the application or wilfully and substantially violates this act, the rules promulgated under this act, or the terms of the license or certificate of registration. The department may modify to a provisional status a license of a child care organization when the licensee wilfully and substantially violates this act, the rules promulgated under this act, or the terms of the license. A license or a certificate of registration shall not be revoked, a renewal of a license or certificate of registration shall not be refused, an application for a license or a certificate of registration shall not be denied, or a regular license shall not be modified to a provisional status unless the licensee, registrant, or applicant is given notice in writing of the grounds of the proposed revocation, denial, modification, or refusal. If revocation, denial, modification, or refusal is appealed within 30 days after receipt of the notice by writing addressed to the director of the department, the director or a designated representative of the director shall conduct a hearing at which the licensee, registrant, or applicant may present testimony and confront witnesses. Notice of the hearing shall be given to the licensee, registrant, or applicant by personal service or delivery to the proper address by certified mail not less than 2 weeks before the date of the

hearing. The decision of the director shall be made not more than 30 days after the hearing, and forwarded to the protesting party by certified mail not more than 10 days thereafter. If the proposed revocation, denial, modification, or refusal is not protested, the license or certificate of registration may be revoked or the application or the renewal of the license or certificate of registration refused.

(3) The department shall deny a license to a child caring institution or foster family group home which does not comply with section 16a of Act No. 183 of the Public Acts of 1943, as amended, being section 125.216a of the Michigan Compiled Laws, section 16a of Act No. 184 of the Public Acts of 1943, as amended, being section 125.286a of the Michigan Compiled Laws, and section 3b of Act No. 207 of the Public Acts of 1921, as amended, being section 125.583b of the Michigan Compiled Laws.

(4) The legislative body of a city, village, or township in which a child caring institution or foster family group home is located may file a complaint with the department to have the organization's license suspended, denied, or revoked pursuant to the procedures outlined in this act and the rules promulgated under this act. The director of the department shall resolve the issues of the complaint within 45 days after the receipt of the complaint. Notice of the resolution of the issues shall be mailed by certified mail to the complainant and the licensee. Failure of the director of the department to resolve the issues of the complaint within 45 days after receipt of the complaint shall serve as a decision by the director to suspend, deny, or revoke the organization's license. If the decision to suspend, deny, or revoke the license or the resolution of the issues is protested by written objection of the complainant or licensee to the director of the department within 30 days after the suspension, denial, or revocation of the license or the receipt of the notice of resolution, the director of the department or a designated representative of the director shall conduct a hearing pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, at which the complainant and licensee may present testimony and cross-examine witnesses. The decision of the director of the department shall be mailed by certified mail to the complainant and the licensee. If the resolution of the issues by the director of the department is not protested within 30 days after receipt of the notice of the resolution, the resolution by the director of the department is final.

History: 1973, Act 116, Eff. Mar. 29, 1974;—Am. 1976, Act 398, Eff. Mar. 31, 1977;—Am. 1980, Act 232, Imd. Eff. July 20, 1980.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.121a Notice of location of new and existing licensed child caring institutions or foster family group homes.

Sec. 11a. The director of the department shall notify the clerk of the city, village, or township and the legislature of the location of new and existing licensed child caring institution or foster family group home within the boundaries of the cities, villages, and townships in this state. The notification for existing licensed organizations shall be given within 90 days after the effective date of this amendatory act and within 30 days after the licensing of a new organization.

History: Add. 1976, Act 398, Eff. Mar. 31, 1977.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.121b Database on child care options.

Sec. 11b. (1) The department shall establish and maintain a database of child care centers, family child care homes, and group child care homes as a central clearinghouse for persons seeking information on child care options. The database shall include, at a minimum, all of the following information:

(a) The name, address, and telephone number of the child care center, family child care home, or group child care home.

(b) The days and general hours of operation of the child care center, family child care home, or group child care home.

(c) The license or registration number, effective date, and expiration date of the child care center, family child care home, or group child care home.

(d) The number and nature of any adverse action taken against the child care center, family child care home, or group child care home by the department.

(2) The department shall make the database available to the public on the internet, without charge, through that department's website.

(3) The department shall inform the public, through press releases or other media avenues, of the information available in the database established under subsection (1) and how to access that database.

History: Add. 2002, Act 645, Imd. Eff. Dec. 23, 2002;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.122 Appeal.

Sec. 12. A person aggrieved by the decision of the director following a hearing under section 11 may, within 30 days after receipt of the decision, take an appeal to the circuit court for the county in which the person resides by filing with the clerk of the court an affidavit setting forth the substance of the proceedings before the department and the errors of law upon which the person relies, and serving the director of the department with a copy of the affidavit. The circuit court shall have jurisdiction to hear and determine the questions of law involved in the appeal. If the department prevails, the circuit court shall affirm the decision of the department; if the licensee, registrant, or applicant prevails, the circuit court shall set aside the revocation, or order the issuance or renewal of the license or certificate of registration.

History: 1973, Act 116, Eff. Mar. 29, 1974;—Am. 1980, Act 232, Imd. Eff. July 20, 1980.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.123 Injunction.

Sec. 13. When there is a violation of this act or a rule promulgated thereunder, and the unlawful activity or condition of the child care organization is likely to result in serious harm to the children under care, the department may seek injunctive action against the child care organization in the circuit court through proceedings instituted by the attorney general on behalf of the department.

History: 1973, Act 116, Eff. Mar. 29, 1974.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.124 Persons authorized to place child.

Sec. 14. Only a parent, guardian of the person of a child, a person related to a child by blood, marriage, or adoption, a licensed child placing agency, or a governmental unit may place a child in the control and care of a person. This section shall not be construed to prevent foster parents from placing foster children in temporary care pursuant to rules promulgated by the department.

History: 1973, Act 116, Eff. Mar. 29, 1974.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

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Administrative rules: R 400.1 et seq.; R 400.9101 et seq.; R 400.11101 et seq.; and R 400.12101 et seq. of the Michigan Administrative Code.

722.124a Consent to medical and surgical treatment of minor child; "routine, nonsurgical medical care" defined.

Sec. 14a. (1) A probate court, a child placing agency, or the department may consent to routine, nonsurgical medical care, or emergency medical and surgical treatment of a minor child placed in out-of-home care pursuant to Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.121 of the Michigan Compiled Laws, Act No. 288 of the Public Acts of 1939, as amended, being sections 710.21 to 712A.28 of the Michigan Compiled Laws, or this act. If the minor child is placed in a child care organization, then the probate court, the child placing agency, or the department making the placement shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. The department may also execute a written instrument investing a child care organization with authority to consent to routine, nonsurgical medical care of the child. If the minor child is

placed in a child care institution, the probate court, the child placing agency, or the department making the placement shall in addition execute a written instrument investing that institution with authority to consent to the routine, nonsurgical medical care of the child.

(2) A parent or guardian of a minor child who voluntarily places the child in a child care organization shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. The parent or guardian shall consent to routine, nonsurgical medical care.

(3) Only the minor child's parent or legal guardian shall consent to nonemergency, elective surgery for a child in foster care. If parental rights have been permanently terminated by court action, consent for nonemergency, elective surgery shall be given by the probate court or the agency having jurisdiction over the child.

(4) As used in this section, "routine, nonsurgical medical care" does not include contraceptive treatment, services, medication or devices.

History: Add. 1974, Act 191, Imd. Eff. July 2, 1974;—Am. 1984, Act 396, Eff. Mar. 29, 1985.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.124b Definitions used in MCL 722.124b, 722.124c, and 722.124d.

Sec. 14b. As used in this section and sections 14c and 14d:

(a) "Adoption attorney" means that term as defined in section 22 of the adoption code, being section 710.22 of the Michigan Compiled Laws.

(b) "Adoption code" means chapter X of Act No. 288 of the Public Acts of 1939, being sections 710.21 to 710.70 of the Michigan Compiled Laws.

(c) "Adoption facilitator" means a child placing agency or an adoption attorney who assists biological parents or guardians or prospective adoptive parents with adoptions pursuant to the adoption code.

(d) "Primary adoption facilitator" means the adoption facilitator in an adoption who files the court documents on behalf of the prospective adoptive parent.

(e) "Public information form" means a form described in section 14d that is completed by a primary adoption facilitator and maintained in a central clearinghouse by the department of social services for distribution pursuant to section 14d to individuals seeking information about adoption.

History: Add. 1994, Act 209, Eff. Jan. 1, 1995.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.124c Filing of public information form by primary adoption facilitator; contents; authentication; applicability of section to certain adoptions.

Sec. 14c. (1) Not later than 10 days after the entry of an order of adoption pursuant to section 56 of the adoption code, being section 710.56 of the Michigan Compiled Laws, the primary adoption facilitator for that adoption shall file with the probate court a completed public information form setting forth information including costs connected with the adoption as prescribed by section 14d. The public information form shall be authenticated by verification under oath by the primary adoption facilitator, or, in the alternative, contain the following statement immediately above the date and signature of the facilitator: "I declare that this public information form has been examined by me and that its contents are true to the best of my information, knowledge, and belief."

(2) This section does not apply to a stepparent adoption, the adoption of a child related to the petitioner within the fifth degree by blood, marriage, or adoption, or an adoption in which the consent of a court or the department is required.

(3) Except as provided in subsection (2), this section applies to adoptions in which the order of adoption under section 56 of the adoption code is entered after the effective date of this section, including adoptions pending on the effective date of this section.

History: Add. 1994, Act 209, Eff. July 1, 1995.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

722.124d Public information form; reporting nonconfidential information; detachable section; distribution of blank forms; acceptance and maintenance of completed forms; individual requests for information about adoption facilitators; sending nonconfidential portion in response to individual's request; fee.

Sec. 14d. (1) The department shall develop a public information form for the reporting of the following nonconfidential information:

- (a) The name and address of the primary adoption facilitator.
- (b) The type of adoption, as follows:
 - (i) Direct placement or agency placement.
 - (ii) Intrastate, interstate, or intercountry.
- (c) The name of the agency and individual who performed the preplacement assessment or the investigation required under section 46 of the adoption code, being section 710.46 of the Michigan Compiled Laws, and the cost of the assessment or investigation.
- (d) The name of each individual who performed counseling services for a biological parent, a guardian, or the adoptee; the individual's agency affiliation, if any; the number of hours of counseling performed; and the cost of that counseling.
- (e) The name of each individual who performed counseling services for an adoptive parent, the individual's agency affiliation, if any, the number of hours of counseling performed, and the cost of that counseling.
- (f) The total amount paid by an adoptive parent for hospital, nursing, or pharmaceutical expenses incurred by a biological parent or the adoptee in connection with the birth or any illness of the adoptee.
- (g) The total amount paid by an adoptive parent for a biological mother's living expenses.
- (h) The total amount paid by an adoptive parent for expenses incurred in ascertaining the information required under section 27 of the adoption code, being section 710.27 of the Michigan Compiled Laws.
- (i) The name of any attorney representing an adoptive parent, the number of hours of service performed in connection with the adoption, and the total cost of the attorney's services performed for the adoptive parent.
- (j) The name of any attorney representing a biological parent, the number of hours of service performed in connection with the adoption, and the total cost of the attorney's services performed for the biological parent.
- (k) The name of any agency assisting a biological parent or adoptive parent, and the cost of all services provided by the agency other than services specifically described in subdivisions (c), (d), and (e).
- (l) The total amount paid by an adoptive parent for a biological parent's travel expenses.
- (m) Any fees or expenses sought but disallowed by the court.
- (n) The total amount of all expenses connected with the adoption that were paid for by the adoptive parent.
- (o) An explanation of any special circumstances that made costs of the adoption higher than would normally be expected.

(2) The public information form prescribed by subsection (1) shall contain a detachable section for the reporting of all of the following confidential information:

- (a) The age, sex, and race of each biological parent.
- (b) The age, sex, and race of the adoptee.
- (c) The name, age, sex, and race of each adoptive parent.
- (d) The county in which the final order of adoption was entered.
- (e) The county, state, and country of origin of the adoptee.
- (f) The legal residence of biological parents.
- (g) The legal residence of adoptive parents.
- (h) The dates of the following actions related to the adoption:
 - (i) The first contact of the birth parent with the primary adoption facilitator.
 - (ii) The first contact of the adoptive parent with the primary adoption facilitator.
 - (iii) The temporary placement, if applicable.
 - (iv) The formal placement.
 - (v) The order of the court finalizing the adoption.

(3) The department of social services shall distribute blank public information forms to adoption facilitators, courts, and other interested individuals and organizations.

(4) Beginning on July 1, 1995, the department of social services shall accept from the probate court of each county and maintain in a central clearinghouse completed public information forms for each adoption completed in this state. Upon the request of an individual seeking information about adoption facilitators serving a particular county or counties, the department shall send the individual a list of all adoption facilitators serving that county or those counties, the number of adoptions each person facilitated in the county

or counties during the preceding 12 months, and the fees the department charges for transmitting copies of public information forms. Upon the individual's request for public information forms for a particular adoption facilitator or facilitators and payment of the required fees, the department shall send the individual copies of the nonconfidential portions of the public information forms completed by that adoption facilitator or those adoption facilitators during the preceding 12 months. If the number of adoptions facilitated by a particular adoption facilitator in a particular county or counties is insufficient to protect the confidentiality of the participants in an adoption, the department shall send the nonconfidential portions of additional public information forms for adoptions facilitated by that adoption facilitator in earlier years or in other counties. The additional forms required to protect confidentiality shall be sent without charge to the individual requesting the information.

(5) If the department receives public information forms completed by a probate register containing only the primary adoption facilitator's name and confidential information, the department shall send the nonconfidential portion of those public information forms completed by the probate register in response to an individual's request for public information forms for that adoption facilitator.

(6) The department may charge a fee for transmitting public information forms to individuals requesting them. The fee shall be sufficient to reimburse the department for the costs of copying, postage or facsimile, and labor.

History: Add. 1994, Act 209, Eff. Jan. 1, 1995;—Am. 1995, Act 107, Imd. Eff. June 23, 1995.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

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722.125 Violation as misdemeanor; penalty; conviction as ground for revocation of license or certificate of registration; effect of revocation, denial, or refusal to renew.

Sec. 15. (1) A person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization who violates this act is guilty of a misdemeanor, punishable by the following:

(a) A fine of not less than \$100.00 or more than \$1,000.00 for a violation of section 3b, 3c, or 3d.

(b) For a violation not described in subdivision (a), a fine of not less than \$100.00 or more than \$1,000.00, or imprisonment for not more than 90 days, or both.

(2) If a person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization is convicted under this act, the conviction is sufficient ground for the revocation of its license or certificate of registration, and the person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization convicted shall not be granted a license or certificate of registration, or be permitted to be connected, directly or indirectly, with a licensee or a registrant for a period of not less than 2 years after the conviction.

(3) A person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization who has a license or certificate of registration revoked, application denied, or renewal refused, may be refused a license or certificate of registration, or be prohibited from being connected, directly or indirectly, with a licensee or a registrant for a period of not less than 2 years after the revocation, denial, or refusal to renew.

History: 1973, Act 116, Eff. Mar. 29, 1974;—Am. 1980, Act 232, Imd. Eff. July 20, 1980;—Am. 1993, Act 218, Eff. Apr. 1, 1994.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.126 Education of public.

Sec. 16. The department shall provide continuous education of the public in regard to the requirements of this act through the ongoing use of mass media and other methods as are deemed appropriate.

History: 1973, Act 116, Eff. Mar. 29, 1974.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.127 Objection on religious grounds to medical examination, immunization, or treatment of child.

Sec. 17. Nothing in the rules adopted pursuant to this act shall authorize or require medical examination, immunization, or treatment for any child whose parent objects thereto on religious grounds.

History: 1973, Act 116, Eff. Mar. 29, 1974.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.127a Use of inhaler or epinephrine auto-injector by child at children's camp.

Sec. 17a. (1) If the conditions prescribed in subsection (2) are met, notwithstanding any children's camp policy to the contrary, a minor child may possess and use 1 or more of the following at the children's camp, on camp-sponsored transportation, or at any activity, event, or program sponsored by the children's camp or in which the minor child is participating:

(a) A metered dose inhaler or a dry powder inhaler to alleviate asthmatic symptoms or for use before exercise to prevent the onset of asthmatic symptoms.

(b) An epinephrine auto-injector or epinephrine inhaler to treat anaphylaxis.

(2) Subsection (1) applies to a minor child if all of the following conditions are met:

(a) The minor child has written approval to possess and use the inhaler or epinephrine auto-injector as described in subsection (1) from the minor child's physician or other health care provider authorized by law to prescribe an inhaler or epinephrine auto-injector and from the minor child's parent or legal guardian.

(b) The director or other chief administrator of the minor child's camp has received a copy of each written approval required under subdivision (a) for the minor child.

(c) There is on file at the children's camp a written emergency care plan that contains specific instructions for the minor child's needs, that is prepared by a licensed physician in collaboration with the minor child and the minor child's parent or legal guardian, and that is updated as necessary for changing circumstances.

(3) A children's camp or an owner, director, or employee of a children's camp is not liable for damages in a civil action for injury, death, or loss to person or property allegedly arising from either of the following:

(a) An employee of the children's camp having prohibited a minor child from using an inhaler or epinephrine auto-injector because the conditions prescribed in subsection (2) had not been satisfied.

(b) An employee of the children's camp having permitted a minor child to use or possess an inhaler or epinephrine auto-injector because the conditions prescribed in subsection (2) had been satisfied.

(4) This section does not eliminate, limit, or reduce any other immunity or defense that a camp or an owner, director, or employee of a camp may have under other state law.

(5) A children's camp may request a minor child's parent or legal guardian to provide an extra inhaler or epinephrine auto-injector to designated camp personnel for use in case of emergency. A parent or legal guardian is not required to provide an extra inhaler or epinephrine auto-injector to camp personnel.

(6) A director or other chief administrator of a children's camp who is aware that a minor child possesses an inhaler or epinephrine auto-injector as authorized under this section shall notify each camp employee who supervises the minor child of that fact and of the provisions of this section.

History: Add. 2005, Act 120, Imd. Eff. Sept. 22, 2005.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

722.128 Repeal.

Sec. 18. Act No. 47 of the Public Acts of 1944, being sections 722.101 to 722.108 of the Compiled Laws of 1970, is repealed.

History: 1973, Act 116, Eff. Mar. 29, 1974.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 116

Popular name: Child Care Licensing Act

FOSTER CARE REVIEW BOARDS

Act 422 of 1984

AN ACT to create a state foster care review board program in the state court administrative office; to create local foster care review boards; to prescribe the powers and duties of certain public officers and certain public and private agencies; and to provide penalties.

History: 1984, Act 422, Imd. Eff. Dec. 28, 1984;—Am. 1986, Act 159, Imd. Eff. July 7, 1986;—Am. 1989, Act 74, Imd. Eff. June 16, 1989.

The People of the State of Michigan enact:

722.131 Definitions.

Sec. 1. As used in this act:

(a) "Child care organization" means a child caring institution or a child placing agency as defined in section 1 of Act No. 116 of the Public Acts of 1973, being section 722.111 of the Michigan Compiled Laws.

(b) "Foster care" means care provided to a child on a 24-hour basis either by a child care organization or by a person or organization appointed by the juvenile division of the probate court, either temporarily or permanently, to provide court supervised child care, pursuant to any of the following:

(i) An order of the juvenile division of the probate court if the court acquired jurisdiction over the child pursuant to section 2(b)(1) or (2) of chapter XA of Act No. 288 of the Public Acts of 1939, being section 712A.2 of the Michigan Compiled Laws.

(ii) A voluntary action of a parent or guardian that results in an expenditure of funds appropriated to the department of social services.

(iii) A voluntary release executed pursuant to section 28 of chapter X of Act No. 288 of the Public Acts of 1939, being section 710.28 of the Michigan Compiled Laws.

(d) "Foster care event" means any of the following:

(i) The child's return to the parent from whom the child was removed.

(ii) The child's placement with a parent other than the parent from whom the child was removed.

(iii) The child's placement with a relative.

(iv) The voluntary release of parental rights to the child.

(v) The filing on behalf of the child of a petition to terminate parental rights to the child.

(e) "Interested party" means any of the following:

(i) A biological parent whose parental rights have not been terminated.

(ii) A foster parent.

(iii) An employee or representative of the child care organization providing the foster care to the child.

(iv) A person with whom a local board consults during a review of a child in foster care.

(v) Any person designated by the state court administrator.

(f) "Local board" means a local foster care review board created under section 4.

(g) "State board program" means the state foster care review board program created in section 2.

History: 1984, Act 422, Imd. Eff. Dec. 28, 1984;—Am. 1986, Act 159, Imd. Eff. July 7, 1986;—Am. 1989, Act 74, Imd. Eff. June 16, 1989.

722.132 State foster care review board program; creation; administration; access to and liaison with probate court; direct supervision of foster care services not authorized.

Sec. 2. (1) The state foster care review board program is created within the state court administrative office, to consist of staff necessary to perform the functions of the state board program as prescribed by this act. The state court administrative office shall administer the state foster care review program.

(2) The state court administrative office shall assist the state board program in developing and maintaining access to and liaison with the probate court in each county of this state that has a local board.

(3) This act shall not be construed to authorize either the state court administrative office or the local boards to provide direct supervision of foster care services.

History: 1984, Act 422, Imd. Eff. Dec. 28, 1984;—Am. 1986, Act 159, Imd. Eff. July 7, 1986;—Am. 1989, Act 74, Imd. Eff. June 16, 1989.

722.133 Duties of state court administrative office.

Sec. 3. The state court administrative office shall do all of the following:

(a) Determine the number of children who are in foster care in this state.

(b) Establish uniform policies and procedures for foster care review pursuant to this act, including criteria

for the selection of foster care cases to be reviewed.

(c) In accordance with section 4, determine the appropriate number of local boards necessary to meet the needs of children in foster care, and establish the jurisdiction of each local board.

(d) Establish criteria and procedures for membership of a local board.

(e) Solicit and receive applications for local board membership and make membership decisions.

(f) Provide written notification to a local board of specific cases of children in foster care appropriate for review, and schedule those cases for review within the time intervals established under section 7.

(g) Inform the child care organization, department of social services, or probate court that provided notification pursuant to section 6(a) of the local board to which the child is assigned.

(h) Make a reasonable effort to provide written notification to each interested party of the date, time, and procedures for a review by a local board of a child in foster care.

(i) Establish a system to monitor the status of each child who is in foster care and who has been assigned to a local board.

(j) Analyze information gathered by local boards throughout this state.

(k) Employ and provide state board program staff and provide local board volunteers.

(l) Provide periodic training sessions for the members of each local board. The training sessions shall include instruction on the need to maintain confidentiality as required under section 8.

(m) Establish an advisory committee consisting of representatives from child care organizations, local boards, and others as the state court administrator considers necessary to review the foster care system and to make recommendations concerning the foster care system to the appropriate groups and agencies. Not less than a majority of the advisory committee shall consist of representatives of the local boards.

(n) Issue an annual report pursuant to section 9.

(o) Perform those duties necessary to implement and review the state board program.

History: 1984, Act 422, Imd. Eff. Dec. 28, 1984;—Am. 1986, Act 159, Imd. Eff. July 7, 1986;—Am. 1989, Act 74, Imd. Eff. June 16, 1989.

722.134 Local foster care review board; creation; additional boards.

Sec. 4. (1) There is created a local foster care review board in each county or in multiple counties as provided in subsection (2). Subject to subsection (3), additional boards may be created in each county or in multiple counties at the discretion of the state court administrative office.

(2) At the direction of the state court administrative office, a single county local board or a board comprised of 1 or more counties is created.

(3) A county shall not have more than 15 local foster care review boards.

History: 1984, Act 422, Imd. Eff. Dec. 28, 1984;—Am. 1986, Act 159, Imd. Eff. July 7, 1986;—Am. 1989, Act 74, Imd. Eff. June 16, 1989;—Am. 1997, Act 170, Eff. Mar. 31, 1998.

722.135 Local foster care review board; membership; terms; persons ineligible for appointment to local board; election of chairperson and vice-chairperson; meetings; training sessions; reimbursement of expenses; removal of member.

Sec. 5. (1) A local board shall be composed of 5 members who reside within the jurisdiction of the local board, and who represent to the maximum extent possible the socio-economic, racial, and ethnic groups residing within that jurisdiction. A local board may have 1 or more alternate members who serve when an appointed board member is unavailable.

(2) A local board member shall serve a renewable 3-year term. Of the initial members, 3 members shall serve for 3 years, and 2 members shall serve for 2 years.

(3) A person employed by a child care organization, the family independence agency, or the court shall not be appointed to a local board.

(4) A local board shall elect 1 of its members to serve as chairperson and 1 to serve as vice-chairperson. Each shall serve for a term of 1 year.

(5) A local board shall meet at a place and time specified by the state court administrative office and approved by the chairperson of the local board.

(6) Each member of a local board shall attend an orientation training session and subsequent training sessions as required by the state court administrative office.

(7) The members of a local board shall serve without compensation. Reimbursement of expenses of members of the local board shall be in accordance with standard travel reimbursement rates established annually by the department of management and budget.

(8) A local board member may be removed for cause by the state court administrator.

History: 1984, Act 422, Imd. Eff. Dec. 28, 1984;—Am. 1986, Act 159, Imd. Eff. July 7, 1986;—Am. 1989, Act 74, Imd. Eff. June 16, 1989;—Am. 1997, Act 170, Eff. Mar. 31, 1998.

722.136 Duties of child care organization, department of social services, or probate court.

Sec. 6. A child care organization, the department of social services, or the probate court responsible for supervising a child in foster care shall do all of the following:

(a) Provide written notification monthly to the state court administrator of an admission into, discharge from, or transfer of a child in foster care.

(b) Upon request submit an initial placement plan; a list of names, addresses, and telephone numbers of interested parties; and progress reports to the appropriate local board at least once each 6 months, and cooperate with and furnish other information requested by the state court administrator. If foster care is purchased from a child placing agency or child caring institution, that organization shall cooperate in the preparation of an initial placement plan and progress reports.

History: 1984, Act 422, Imd. Eff. Dec. 28, 1984;—Am. 1986, Act 159, Imd. Eff. July 7, 1986;—Am. 1989, Act 74, Imd. Eff. June 16, 1989.

722.137 Powers and duties of local board.

Sec. 7. (1) A local board shall do all of the following:

(a) Review each initial placement plan submitted under section 6 for a child in foster care. The review shall be to determine whether the placement plan for the child contains at least all of the following information:

(i) The purpose for which the child has been placed in foster care and the reason that the child cannot be returned to his or her home immediately.

(ii) The length of time in which the purpose of foster care will be accomplished.

(iii) An assessment of the involvement of the legal parent and steps taken by the child care organization to involve the legal parent in the planning and implementation of the plan.

(iv) A description of the services which have been and are to be provided in order for the purpose of foster care to be accomplished.

(v) The number of foster care placements the child has experienced while in foster care, and the length of time of each foster care placement.

(vi) The person within the child care organization who is directly responsible for assuring that the plan is implemented.

(vii) The type of permanent placement recommended for the child.

(b) Review progress reports submitted under section 6(b) every 6 months following the initial review to determine whether the purpose for which the child has been placed in foster care, as described in the initial placement plan, is being achieved, and whether the plan continues to be appropriate, based on a review of all of the following:

(i) An assessment of the extent to which the child care organization is accomplishing the purpose of foster care as described in the placement plan.

(ii) Identification of the person within the child care organization who is directly responsible for assuring that the placement plan is implemented.

(iii) The length of time the child has been in foster care.

(iv) The number of foster care placements the child has experienced while in foster care and the length of time of each foster care placement.

(v) An assessment of the involvement of the legal parent and steps taken by the child care organization to involve the legal parent in planning and implementation of the plan.

(c) Whenever practicable, conduct reviews and submit reports, as required under subdivision (e), before the judicial review or rehearing mandated in section 19 of chapter XIII A of 1939 PA 288, MCL 712A.19.

(d) Review, at any time considered necessary by the local board, or at the request of the court or an interested party, the case and information submitted by a child care organization under section 6.

(e) Submit to the child care organization that submitted the initial placement plan and progress report and, if applicable, to the court, within 30 days after a review under subdivision (a) or (b), a written statement of findings and recommendations regarding the care, maintenance, and supervision of a child in foster care and the plan for permanent placement of the child. A copy of the statement may be sent to all interested parties. The local board may give information or file a petition for court action or rehearing under section 11 or 21 of chapter XIII A of 1939 PA 288, MCL 712A.11 and 712A.21.

(f) Hear an appeal of a proposed change in foster care placement as provided in section 13b of chapter XIII A of 1939 PA 288, MCL 712A.13b, and report to the court as required by that section.

(g) As part of the ongoing review process, select permanent wards for review from all of the following categories:

(i) Wards who are registered with the Michigan adoption resource exchange and who have been on hold status for not less than 12 months.

(ii) Wards who have not been registered with the Michigan adoption resource exchange, have been permanent wards for not less than 6 months, and do not have a documented permanency plan in place.

(iii) Wards who are less than 12 years of age and have been listed in the Michigan adoption resource exchange photo listing book for more than 6 months and for whom no family has been identified.

(h) Perform those duties necessary to implement this act.

(2) A local board may limit the review to a written report or request a personal appearance of an interested party, as considered necessary by the local board.

(3) If interested parties are provided with a copy of the findings and recommendations of the local board, the local board shall allow the interested parties to submit written comments. Upon approval of a local board, an interested party may make a personal appearance before the local board in connection with the foster care case.

(4) A local board may make recommendations to the state court administrative office regarding issues in foster care policy and procedure and the functions of child care organizations and the court.

(5) A local board shall compile and maintain statistics and make findings regarding its reviews of permanent wards under subsection (1)(g), including, but not limited to, identification of any barriers to permanency.

(6) The Michigan adoption resource exchange shall cooperate with the foster care review board program and submit copies of their file material and registration documentation as requested by the foster care review board program.

History: 1984, Act 422, Imd. Eff. Dec. 28, 1984;—Am. 1986, Act 159, Imd. Eff. July 7, 1986;—Am. 1989, Act 74, Imd. Eff. June 16, 1989;—Am. 1997, Act 170, Eff. July 1, 1998.

722.137a Placement of siblings; variance from licensing rules or statutes.

Sec. 7a. If the case of a child who has at least 1 sibling is otherwise before a local board, the local board may evaluate the child's placement in a foster family home or foster family group home that would allow the child and 1 or more siblings to remain or be placed together, but would also require obtaining a variance from 1 or more licensing rules or statutes under section 8b of 1973 PA 116, MCL 722.118b. If the local board determines that such a placement would be in the child's best interests and that the variance from the particular licensing rules or statutes would not jeopardize the health or safety of a child residing in the foster family home or foster family group home, the local board shall recommend the variance to the department of consumer and industry services as provided in section 8b of 1973 PA 116, MCL 722.118b.

History: Add. 1997, Act 170, Eff. Mar. 31, 1998.

722.138 Confidentiality.

Sec. 8. (1) Records regarding specific children and their parents and relatives shall be confidential. Disclosure of this confidential information shall be properly safeguarded by the local board, the staff of the state board, and the state court administrator.

(2) A person who discloses confidential information contained in records, reports, and plans prepared pursuant to this act is guilty of a misdemeanor.

(3) Unauthorized disclosure of information contained in records and reports made pursuant to this act by a member of a local board shall be grounds for removal from the board.

History: 1984, Act 422, Imd. Eff. Dec. 28, 1984;—Am. 1989, Act 74, Imd. Eff. June 16, 1989.

722.139 Annual report.

Sec. 9. (1) The state court administrator shall publish an annual report of the state board program created by this act and shall make the annual report available to the public. Additionally, the state court administrator shall submit the annual report to the legislature and the governor.

(2) The annual report required by subsection (1) shall include, but is not limited to, all of the following:

(a) An evaluative summary, supplemented by applicable quantitative data, of the activities and functioning of each local board during the preceding year.

(b) An evaluative summary, supplemented by applicable quantitative data, of the activities and functioning of the aggregate of all local boards in the state during the preceding year.

(c) An identification of problems that impede the timely placement of children in a permanent placement and recommendations for improving the timely placement of children in a permanent placement.

(d) The statistics and findings compiled under section 7(5).

History: 1984, Act 422, Imd. Eff. Dec. 28, 1984;—Am. 1986, Act 159, Imd. Eff. July 7, 1986;—Am. 1989, Act 74, Imd. Eff. June 16, 1989;—Am. 1997, Act 170, Eff. July 1, 1998.

16, 1989;—Am. 1997, Act 170, Eff. Mar. 31, 1998.

722.139a Reevaluation of state board program; recommendations.

Sec. 9a. The state court administrator may reevaluate the state board program and make recommendations to the legislature that the state board program be terminated or placed under the jurisdiction of the legislative or executive branch.

History: Add. 1989, Act 74, Imd. Eff. June 16, 1989.

722.140 Repealed. 1989, Act 74, Imd. Eff. June 16, 1989.

Compiler's note: The repealed section provided for the repeal of this act effective October 1, 1989.

ADING OR ABETTING VIOLATIONS OF JUVENILE COURT ORDERS
Act 296 of 1968

AN ACT to prohibit the aiding or abetting of violations of juvenile court orders or to harbor juvenile runaways; and to provide penalties for violation of this act.

History: 1968, Act 296, Eff. Nov. 15, 1968.

The People of the State of Michigan enact:

722.151 Aiding or abetting violations by juveniles, or harboring runaways prohibited.

Sec. 1. No person shall knowingly and wilfully aid or abet a child under the age of 17 years to violate an order of a juvenile court or knowingly and wilfully conceal or harbor juvenile runaways who have taken flight from the custody of the court, their parents or legal guardian.

History: 1968, Act 296, Eff. Nov. 15, 1968.

722.152 Violation of act; penalty.

Sec. 2. Any person who violates the provisions of this act is guilty of a misdemeanor and shall be fined not more than \$500.00 or imprisoned not more than 1 year, or both.

History: 1968, Act 296, Eff. Nov. 15, 1968.

REIMBURSEMENT OF LEGAL COSTS OF FOSTER PARENTS

Act 33 of 1980

AN ACT to provide for the reimbursement of certain legal costs of foster parents; to provide for the recognition and nonrecognition of certain causes of action against foster parents and legal guardians; and to prescribe powers and duties of the department of social services.

History: 1980, Act 33, Imd. Eff. Mar. 11, 1980;—Am. 1988, Act 233, Eff. Aug. 1, 1988.

The People of the State of Michigan enact:

722.161 Reimbursement of certain legal costs of foster parents; conditions.

Sec. 1. (1) The department of social services may reimburse a foster parent for the costs of legal counsel when an action is commenced against the foster parent for injury or damage which is sustained or which is alleged to have been sustained by, or which resulted from or which is alleged to have resulted from the action of, a foster child during the time when the foster parent was acting within the scope of his or her authority as a foster parent. This subsection does not apply to an administrative hearing or judicial review under Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

(2) The department of social services shall not reimburse a foster parent as provided in subsection (1), unless the department is satisfied that all of the following apply:

(a) The foster parent is licensed under Act No. 116 of the Public Acts of 1973, as amended, being sections 722.111 to 722.128 of the Michigan Compiled Laws.

(b) If the action is a civil action, a judgment for damages is not awarded against the foster parent as a result of the action.

(c) If the action is a criminal action, the foster parent is not convicted, does not plead nolo contendere, or is not found guilty but mentally ill or not guilty by reason of insanity as a result of the action.

History: 1980, Act 33, Imd. Eff. Mar. 11, 1980.

722.162 Defenses; liability.

Sec. 2. (1) This act shall not be construed to defeat, deny, or diminish a defense otherwise available to a foster parent or to a foster child in another action.

(2) The reimbursement of a foster parent under this act shall not impose any liability on the department of social services or a foster parent.

History: 1980, Act 33, Imd. Eff. Mar. 11, 1980.

722.163 Action against foster parent or legal guardian for injuries; “legal guardian” defined.

Sec. 3. (1) A foster child may maintain an action against his or her foster parent who is licensed under Act No. 116 of the Public Acts of 1973, being sections 722.111 to 722.128 of the Michigan Compiled Laws, and a child may maintain an action against his or her legal guardian for injuries suffered as a result of the alleged ordinary negligence of the foster parent or legal guardian except in either of the following instances:

(a) If the alleged negligent act involves an exercise of reasonable parental authority over the child.

(b) If the alleged negligent act involves an exercise of reasonable parental discretion with respect to the provision of food, clothing, housing, medical and dental services, and other care.

(2) As used in this section, “legal guardian” means a person appointed by a court of competent jurisdiction to exercise care and custody decisions over a minor.

History: Add. 1988, Act 233, Eff. Aug. 1, 1988.

Compiler's note: Section 3 of Act 233 of 1988 provides: “This amendatory act shall apply to causes of action occurring on or after August 1, 1988.”

CRIPPLED CHILDREN'S ACT

Act 158 of 1937

722.201-722.244 Repealed. 1978, Act 368, Eff. Sept. 30, 1978;—1978, Act 368, Eff. Sept. 30, 1980.

AFFLICTED CHILDREN'S ACT

Act 283 of 1939

722.301-722.325 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

TREATMENT OF DEPENDENT CHILDREN AT UNIVERSITY HOSPITAL
Act 138 of 1881

722.401-722.406 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

CHILD GUIDANCE CLINICS; COMMUNITY MENTAL HEALTH CLINICS
Act 13 of 1944 (1st Ex. Sess.)

AN ACT to authorize county boards of supervisors and local governing bodies to appropriate moneys to child guidance clinics and community mental health clinics providing service for children and/or adults.

History: 1944, 1st Ex. Sess., Act 13, Imd. Eff. Feb. 19, 1944;—Am. 1956, Act 92, Eff. Aug. 11, 1956.

The People of the State of Michigan enact:

722.481 Child guidance and community mental health clinic, financing.

Sec. 1. The board of supervisors of any county or the governing body of any city, village, school district or township in this state may, except as otherwise specifically provided, furnish and appropriate moneys for the operation of child guidance clinics and community mental health clinics providing service for children or adults established by state authority and the governing body of any school district may appropriate money for land and buildings to be used by the clinics although title thereto is not vested in the appropriating body.

History: 1944, 1st Ex. Sess., Act 13, Imd. Eff. Feb. 19, 1944;—CL 1948, 722.481;—Am. 1956, Act 92, Eff. Aug. 11, 1956;—Am. 1967, Act 54, Eff. Nov. 2, 1967.

CONTRACTS FOR CARE OF CHILDREN

Act 137 of 1921

AN ACT authorizing counties of this state to contract with agencies, institutions, and hospitals licensed by the department of consumer and industry services for the aid, care, support, maintenance, treatment, cure, or relief of children.

History: 1921, Act 137, Eff. Aug. 18, 1921;—Am. 1996, Act 411, Eff. Jan. 1, 1998.

The People of the State of Michigan enact:

722.501 Care of children; agreements by county board of commissioners; maximum expenditure; county expense.

Sec. 1. A county board of commissioners may enter into an agreement or agreements for a period not exceeding 1 year with any agency, institution, or hospital, or agencies, institutions, or hospitals which have been and are for the current year licensed by the department of consumer and industry services to receive aid, care for, support, maintain, treat, cure, or relieve in or by the agency, institution, or hospital, any poor, sick, distressed, abandoned, needy, or crippled child or children residing within the county who may be referred to such agency, institution, or hospital by a judge of the family division of circuit court for the county in accordance with the provisions of this act, whether the aid, care, support, maintenance, treatment, cure, or relief is furnished wholly or in part by such agency, institution, or hospital. The proper charges under the contract or contracts shall be audited and paid from time to time by the board of auditors, or by the county board of commissioners of the county in counties not having a board of auditors. However, a county board of commissioners, before entering into a contract under this section shall fix the maximum amount to be expended for the purposes described in this section during any 1 year, which shall be raised, levied, and collected as part of the general expense of the county.

History: 1921, Act 137, Eff. Aug. 18, 1921;—CL 1929, 12877;—CL 1948, 722.501;—Am. 1996, Act 411, Eff. Jan. 1, 1998.

Compiler's note: The board of corrections and charities, referred to in this section, was abolished and its powers and duties transferred to the department of social welfare by MCL 400.19. The department of social welfare was subsequently transferred to the department of social services by MCL 16.552.

722.502 Approval of contracts.

Sec. 2. No contract or agreement entered into under the provisions of this act shall have any binding force until the same shall have been approved by the state board of corrections and charities.

History: 1921, Act 137, Eff. Aug. 18, 1921;—CL 1929, 12878;—CL 1948, 722.502.

Compiler's note: The board of corrections and charities, referred to in this section, was abolished and its powers and duties transferred to the department of social welfare by MCL 400.19. The department of social welfare was subsequently transferred to the department of social services by MCL 16.552.

722.503 Judge of family division of circuit court; duties.

Sec. 3. If a county board of commissioners enters into any contract under section 1, a judge of the family division of circuit court for the county shall refer to the proper agency, institution, or hospital with which the contract has been made, such poor, sick, distressed, abandoned, needy, or crippled child or children, residing in the county as have been provided for by the appropriations made for the purpose in accordance with this act.

History: 1921, Act 137, Eff. Aug. 18, 1921;—CL 1929, 12879;—CL 1948, 722.503;—Am. 1996, Act 411, Eff. Jan. 1, 1998.

722.504 Forfeiture of license; effect on contracts.

Sec. 4. Should the license of any such agency, institution or hospital with which such contract shall have been made be at any time forfeited for any reason, then any contract or contracts existing and unperformed between such agency, institution or hospital and any board of supervisors shall cease, and be null and void.

History: 1921, Act 137, Eff. Aug. 18, 1921;—CL 1929, 12880;—CL 1948, 722.504.

722.505 Repealed. 1996, Act 411, Eff. Jan. 1, 1998.

Compiler's note: The repealed section pertained to construction of act.

COMMITMENT OF CHILDREN TO STATE INSTITUTIONS

Act 271 of 1925

AN ACT to provide for the commitment to state institutions of certain children placed with, released to, or committed to persons, societies, organizations, associations or corporations licensed and approved by the state department of social welfare; to provide for the protection of the rights of children over whom jurisdiction is in doubt because of some question of residence, and providing for the payment of the expense thereof.

History: 1925, Act 271, Eff. Aug. 27, 1925;—Am. 1955, Act 186, Imd. Eff. June 14, 1955.

The People of the State of Michigan enact:

722.531 Children incapable of adoption; commitment to state institution; expenses of commitment; maintenance.

Sec. 1. Whenever it appears to the court that a child placed with, committed to, or released to a person, society, organization, association, or corporation licensed and approved by the family independence agency to receive, maintain, or place out for adoption minor children or to obtain homes for dependent and neglected children, is, by reason of mental or physical disability or for any other reason, incapable of adoption, the child may be committed to a proper state institution. A commitment under this section may be made by the family division of the circuit court for the county in which the home of the person, or the principal office of the society, organization, association, or corporation is located, or for the county in which the child was placed with, released to, or committed to the person, society, organization, association, or corporation, or for the county in which the child may be found, upon application of the person or the principal officer of the society, organization, association, or corporation to which such child has been committed or released. The expense of committing the child to a state institution and any expense chargeable to counties for maintenance in a state institution shall be paid by the county where the child was a resident at the time of his or her placement with, release to, or commitment to the person, society, organization, association, or corporation.

History: 1925, Act 271, Eff. Aug. 27, 1925;—CL 1929, 12882;—CL 1948, 722.531;—Am. 1955, Act 186, Imd. Eff. June 14, 1955;—Am. 1996, Act 410, Eff. Jan. 1, 1998.

722.532 Protection of children's rights; director of social welfare, duties.

Sec. 2. Whenever, after a careful investigation and report, it shall appear to the director of the state department of social welfare that any child in Michigan under 17 years of age has no guardian willing and able to take suitable action in behalf of the child or that it appears that such child is being deprived of some service or right generally available to children in Michigan because of the refusal or asserted inability of some administrative or judicial agency or agencies of the state or its political subdivisions to provide or order such service or enforce such right, and it further appears that such refusal or asserted inability exists for the reason of no jurisdiction or power because of some question of residence of the child, it shall be the duty of said director, acting as the agent of the state, to take such action as may be necessary to obtain a final legal determination as to which administrative or judicial agency has the duty of furnishing or ordering the service to or protecting the rights of such child.

History: Add. 1955, Act 186, Imd. Eff. June 14, 1955.

722.533 Protection of children's rights; prosecuting attorney.

Sec. 3. It shall be the duty of the prosecuting attorney of the county, in some court of or for which the director, with the advice of the attorney general, determines to begin his action to discharge this service for the state including appeals whenever such may be necessary to reach a final determination.

History: Add. 1955, Act 186, Imd. Eff. June 14, 1955.

722.534 Protection of children's rights; question of jurisdiction, residence, costs.

Sec. 4. As it is the intent of the legislature that this duty shall be for the general purpose of clarifying the laws for the protection of children, when a question of jurisdiction based on residence is concerned, all cases arising under this act shall be deemed public cases without assessment of costs against any party.

History: Add. 1955, Act 186, Imd. Eff. June 14, 1955.

CARE AND CUSTODY OF CHILDREN ON SEPARATION OF FATHER AND MOTHER

Act 192 of 1873

722.541 Repealed. 1970, Act 91, Eff. Apr. 1, 1971.

PROTECTION OF CHILDREN
Act 260 of 1881

722.553-722.565 Repealed. 1980, Act 180, Imd. Eff. July 2, 1980.

REPORTING PHYSICAL INJURIES TO CHILDREN
Act 98 of 1964

722.571-722.575 Repealed. 1975, Act 238, Eff. Oct. 1, 1975.

PROTECTION OF CHILDREN FROM IMMORALITY AND CRIME
Act 193 of 1887

722.581-722.583 Repealed. 1983, Act 208, Imd. Eff. Nov. 10, 1983.

LEAD POISONING IN MINORS
Act 183 of 1972

722.591-722.594 Repealed. 1978, Act 312, Imd. Eff. July 10, 1978;—1978, Act 368, Eff. Sept. 30, 1978.

CHILD ABUSE AND NEGLECT PREVENTION ACT

Act 250 of 1982

AN ACT to establish the state child abuse and neglect prevention board; to provide the powers and duties of the state child abuse and neglect prevention board; and to prescribe the powers and duties of certain state departments.

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982.

The People of the State of Michigan enact:

722.601 Short title.

Sec. 1. This act shall be known and may be cited as the “child abuse and neglect prevention act”.

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982.

Compiler's note: Former MCL 722.601 to 722.612, deriving from Ch. 42 of R.S. 1846 and pertaining to maintenance of children born out of wedlock, were repealed by Act 256 of 1964.

For transfer of authority, powers, duties, functions, and responsibilities State Child Abuse and Neglect Prevention Board from the Department of Management and Budget to the Department of Social Services, see E.R.O. No. 1992-5, compiled at MCL 722.620 of the Michigan Compiled Laws.

722.602 Definitions.

Sec. 2. (1) As used in this act:

(a) “Child” means a person under 18 years of age.

(b) “Child abuse” means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare, which harm occurs or is threatened through nonaccidental physical or mental injury; sexual abuse, which includes a violation of section 145c of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.145c of the Michigan Compiled Laws.

(c) “Local council” means an organization which meets the criteria described in section 10(a).

(d) “Neglect” means harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(e) “State board” means the state child abuse and neglect prevention board created in section 3.

(f) “Prevention program” means a system of direct provision of child abuse and neglect prevention services to a child, parent, or guardian, and may include research programs related to prevention of child abuse and neglect.

(g) “Trust fund” means the children's trust fund established in the department of treasury.

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982.

Compiler's note: Former MCL 722.601 to 722.612, deriving from Ch. 42 of R.S. 1846 and pertaining to maintenance of children born out of wedlock, were repealed by Act 256 of 1964.

722.603 State child abuse and neglect prevention board; creation; exercise of powers and duties; performance of management functions; appointment and qualifications of executive director; staff.

Sec. 3. (1) The state child abuse and neglect prevention board is created as an autonomous agency within the department of management and budget. The state board shall exercise its powers and duties independently of the director of the department of management and budget except that budget, procurement, and related management functions shall be performed by the director of the department of management and budget.

(2) The state board shall appoint the executive director of the state board. The executive director shall be a member of the state classified civil service.

(3) The executive director shall hire all staff required to exercise the powers and carry out the duties of the state board. The state board shall approve the number of staff members hired and their job descriptions.

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982.

Compiler's note: Former MCL 722.601 to 722.612, deriving from Ch. 42 of R.S. 1846 and pertaining to maintenance of children born out of wedlock, were repealed by Act 256 of 1964.

For transfer of authority, powers, duties, functions, and responsibilities State Child Abuse and Neglect Prevention Board from the Department of Management and Budget to the Department of Social Services, see E.R.O. No. 1992-5, compiled at MCL 722.620 of the Michigan Compiled Laws.

722.604 State board; composition; appointment, qualifications, and terms of public members; chairperson; election of officers and committees; compensation, reimbursement, salaries, and operating expenses.

Sec. 4. (1) The state board shall be composed of the following members:

(a) The director of human services, the director of community health, the superintendent of public instruction, and the director of the department of state police, or designees authorized to speak on their behalf.

(b) Eleven public members appointed by the governor with the advice and consent of the senate. As a group, the public members shall do all of the following:

(i) Demonstrate knowledge in the area of child abuse and neglect prevention.

(ii) Be representative of the demographic composition of this state.

(iii) To the extent practicable, be representative of all of the following categories: parents, organized labor, the business community, the religious community, the legal community, professional providers of child abuse and neglect prevention services, and volunteers in child abuse and neglect prevention services.

(2) The term of each public member shall be 3 years, except that of the public members first appointed, 3 shall serve for 3 years, 3 for 2 years, and 4 for 1 year. A public member shall not serve more than 2 consecutive terms whether partial or full. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(3) The governor shall designate a chairperson of the state board from among the public members. The chairperson shall serve in that position at the pleasure of the governor. The state board may elect other officers and committees as it considers appropriate.

(4) The actual and necessary per diem compensation and the schedule for reimbursement of expenses for the public members of the state board shall be the same as is established annually by the legislature for similar boards that are reimbursed from the general fund. The compensation and reimbursement, executive director and staff salaries, and all actual and necessary operating expenses of the state board shall be paid from the trust fund, according to an authorization as provided in section 9.

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982;—Am. 2005, Act 82, Imd. Eff. July 19, 2005.

Compiler's note: Former MCL 722.601 to 722.612, deriving from Ch. 42 of R.S. 1846 and pertaining to maintenance of children born out of wedlock, were repealed by Act 256 of 1964.

722.605 Conducting business at public meeting; notice; availability of writings to public.

Sec. 5. (1) The business which the state board performs shall be conducted at a public meeting of the state board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.

(2) A writing prepared, owned, used, in the possession of, or retained by the state board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982.

Compiler's note: Former MCL 722.601 to 722.612, deriving from Ch. 42 of R.S. 1846 and pertaining to maintenance of children born out of wedlock, were repealed by Act 256 of 1964.

722.606 Duties of state board.

Sec. 6. (1) The state board shall do all of the following:

(a) Meet not less than twice annually at the call of the chairperson.

(b) One year after the original appointment of the state board, and biennially thereafter, develop a state plan for the distribution of funds from the trust fund. In developing the plan, the state board shall review already existing prevention programs. The plan shall assure that an equal opportunity exists for establishment of prevention programs and receipt of trust fund money among all geographic areas in this state. The plan shall be transmitted to the clerk of the house of representatives and to the secretary of the senate. The state board shall notify the governor and the members of the legislature that the plan is available.

(c) Provide for the coordination and exchange of information on the establishment and maintenance prevention programs.

(d) Develop and publicize criteria for the receipt of trust fund money by eligible local councils and eligible prevention programs.

(e) Review, approve, and monitor the expenditure of trust fund money by local councils and prevention programs.

(f) Provide statewide educational and public informational seminars for the purpose of developing appropriate public awareness regarding the prevention of child abuse and neglect; encourage professional persons and groups to recognize and deal with prevention of child abuse and neglect; encourage and coordinate the development of local councils; make information about the prevention of child abuse and

neglect available to the public and organizations and agencies which deal with problems of child abuse and neglect; and encourage the development of community prevention programs.

(g) Establish a procedure for an annual, internal evaluation of the functions, responsibilities, and performance of the state board. In a year in which the biennial state plan is prepared, the evaluation shall be coordinated with the preparation of the state plan.

(2) The state board shall enter into contracts with public or private agencies to fulfill the requirements of subsection (1)(f) and may contract to fulfill the other requirements of subsection (1). The state board shall utilize existing state resources and staff of participating departments whenever practicable.

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982.

Compiler's note: Former MCL 722.601 to 722.612, deriving from Ch. 42 of R.S. 1846 and pertaining to maintenance of children born out of wedlock, were repealed by Act 256 of 1964.

722.607 Recommending changes to governor and legislature.

Sec. 7. The state board may recommend to the governor and the legislature changes in state programs, statutes, policies, budgets, and standards which will reduce the problem of child abuse and neglect, improve coordination among state agencies that provide prevention services, and improve the condition of children and parents or guardians who are in need of prevention program services.

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982.

Compiler's note: Former MCL 722.601 to 722.612, deriving from Ch. 42 of R.S. 1846 and pertaining to maintenance of children born out of wedlock, were repealed by Act 256 of 1964.

722.608 Federal funds, gifts, grants, bequests, and donations; disposition.

Sec. 8. (1) The state board may do any of the following:

(a) Accept federal money granted by congress or executive order for the purposes of this act as well as gifts, grants, bequests, and donations from individuals, private organizations, or foundations. The acceptance and use of federal money does not commit state money and does not place an obligation upon the legislature to continue the purposes for which the federal money is made available.

(b) Enter into a contract with a charitable organization licensed under the charitable organizations and solicitations act, Act No. 169 of the Public Acts of 1975, being sections 400.271 to 400.294 of the Michigan Compiled Laws, for the solicitation of contributions to be used exclusively for the purposes prescribed by section 9. A contract under this subdivision shall include provisions for at least all of the following:

(i) A reasonable administrative fee not to exceed 10% for contributions obtained by the charitable organization.

(ii) An independent audit of the charitable organization in regard to the solicitation.

(iii) Appropriate bonding by the charitable organization.

(c) Plan, manage, or conduct a campaign to solicit gifts, bequests, grants, or donations of money or property, or pledges of gifts, bequests, grants, or donations.

(2) Money received in the manner described in this section shall be transmitted to the state treasurer for deposit in the trust fund and shall be made available for expenditure as appropriated by the legislature.

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982;—Am. 1995, Act 146, Imd. Eff. July 11, 1995.

Compiler's note: Former MCL 722.601 to 722.612, deriving from Ch. 42 of R.S. 1846 and pertaining to maintenance of children born out of wedlock, were repealed by Act 256 of 1964.

722.609 Authorization for disbursement of trust fund money; purposes; order of preference; limitation.

Sec. 9. (1) The state board may authorize the disbursement of available money from the trust fund, upon legislative appropriations, for exclusively the following purposes, which are listed in the order of preference for expenditure:

(a) To fund a private nonprofit or public organization in the development or operation of a prevention program if at least all of the following conditions are met:

(i) The appropriate local council has reviewed and approved the program. This subparagraph does not apply if a local council does not exist for the geographic area to be served by the program.

(ii) The organization demonstrates an ability to match, through money or in-kind services, 50% of the amount of any trust fund money received. The amount and types of in-kind services are subject to the approval of the state board.

(iii) The organization demonstrates a willingness and ability to provide program models and consultation to organizations and communities regarding program development and maintenance.

(iv) Other conditions that the state board may deem appropriate.

(b) To fund local councils.

(c) To fund the state board created in section 3 for the actual and necessary operating expenses that the board incurs in performing its duties.

(2) Authorizations for disbursement of trust fund money under subsection (1)(c) shall be kept at a minimum in furtherance of the primary purpose of the trust fund which is to disburse money under subsection (1)(a) and (b) to encourage the direct provision of services to prevent child abuse and neglect.

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982.

Compiler's note: Former MCL 722.601 to 722.612, deriving from Ch. 42 of R.S. 1846 and pertaining to maintenance of children born out of wedlock, were repealed by Act 256 of 1964.

722.610 Grants to local council; criteria.

Sec. 10. In making grants to a local council, the state board shall consider the degree to which the local council meets the following criteria:

(a) Has as its primary purpose the development and facilitation of a collaborative community prevention program in a specific geographical area. The prevention program shall utilize trained volunteers and existing community resources wherever practicable.

(b) Is administered by a board of directors composed of an equal number of members from the following 2 groups:

(i) A representative from each of the following local agencies: the county department of social services, the department of public health, the department of mental health, the probate court, the office of the prosecuting attorney, a local law enforcement agency, a school district, and a number of private, local agencies that provide treatment or prevention services for abused and neglected children and their parents or guardians. The number of private agencies to be represented on the local council shall be designated in the bylaws of the local council by the remaining members.

(ii) Members of the local council elected by the membership. The elected members shall represent the demographic composition of the community served, as far as practicable.

(c) Does not provide direct services except on a demonstration project basis, or as a facilitator of interagency projects.

(d) Demonstrates a willingness and ability to provide prevention program models and consultation to organizations and communities regarding prevention program development and maintenance.

(e) Demonstrates an ability to match, through money or in-kind services, 50% of the amount of any trust fund money received. The amount and types of in-kind services are subject to the approval of the state board.

(f) Other criteria that the state board deems appropriate.

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982.

Compiler's note: Former MCL 722.601 to 722.612, deriving from Ch. 42 of R.S. 1846 and pertaining to maintenance of children born out of wedlock, were repealed by Act 256 of 1964.

722.611 Rules.

Sec. 11. Not later than 2 years after the effective date of this act, the state board shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982.

Compiler's note: Former MCL 722.601 to 722.612, deriving from Ch. 42 of R.S. 1846 and pertaining to maintenance of children born out of wedlock, were repealed by Act 256 of 1964.

722.612 Review of functions, responsibilities, and performance of state board; transmittal; notice.

Sec. 12. A thorough, written review of the functions, responsibilities, and performance of the state board shall be completed by the auditor general each 3 years after the effective date of this act. The review shall be transmitted and notice given in the same manner as provided in section 6(1)(b).

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982.

Compiler's note: Former MCL 722.601 to 722.612, deriving from Ch. 42 of R.S. 1846 and pertaining to maintenance of children born out of wedlock, were repealed by Act 256 of 1964.

722.613 Conditional effective date.

Sec. 13. This act shall not take effect unless the following bills of the 81st Legislature are enacted into law:

(a) House Bill No. 5610.

(b) House Bill No. 5609.

History: 1982, Act 250, Imd. Eff. Sept. 29, 1982.

Rendered Wednesday, January 14, 2009

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Michigan Compiled Laws Complete Through PA 331-358, 360, 361, 364-367, 370-378, 382, 384-386, 390-394, and 396-427, 429, and 431 of 2008

Compiler's note: House Bill No. 5610, referred to in this section, was approved by the Governor on September 29, 1982, and became P.A. 1982, No. 249, Imd. Eff. Sept. 29, 1982. House Bill No. 5609, also referred to in this section, was approved by the Governor on July 2, 1982, and became P.A. 1982, No. 211, Eff. Sept. 29, 1982.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1992-5

722.620 Transfer of state child abuse and neglect prevention board from department of management and budget to the department of social services by type I transfer.

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Children's Trust Fund was created as a separate fund in the Department of Treasury by Act No. 249 of the Public Acts of 1982, being Section 21.171 et seq. of the Michigan Compiled Laws; and

WHEREAS, the State Child Abuse and Neglect Prevention Board was created by Act No. 250 of the Public Acts of 1982, being Section 722.601 et seq. of the Michigan Compiled Laws, in the Department of Management and Budget with, inter alia, responsibilities for development of a state plan for the distribution of funds from the Children's Trust Fund; publicizing of criteria for receipt of Children's Trust Fund funds; review, approval and monitoring of expenditure of Children's Trust fund money; and, authorizing disbursement of available money from the Children's Trust Fund; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

(1) All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, of the State Child Abuse and Neglect Prevention Board created under Act No. 250 of the Public Acts of 1982, being Section 722.601 et seq. of the Michigan Compiled Laws, and the State Child Abuse and Neglect Prevention board itself, are hereby transferred from the Department of Management and Budget to the Department of Social Services by a Type I transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

(2) The Director of the Department of Social Services shall provide executive direction and supervision for the implementation of the transfers. All budgeting, procurement and related management functions of the State Child Abuse and Neglect Prevention Board shall be performed under the direction and supervision of the Director of the Department of Social Services.

(3) All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the State Child Abuse and Neglect Prevention Board for the functions transferred to the Department of Social Services by this order are hereby transferred to the Department of Social Services.

(4) The Director of the Department of Social Services shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

(5) The Director of the Department of Social Services and the Director of the Department of Management and Budget shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the State Child Abuse and Neglect Prevention Board.

(6) All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

(7) Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

(8) The State Child Abuse and Neglect Prevention Board shall develop procedures to assure, among other things, that grants or other transfers made by it to the Department of Social Services shall be free of any conflict of interest and shall not result in any duplication of efforts or services.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Order shall become effective 60 days after the filing of this Order.

History: 1992, E.R.O. No. 1992-5, Eff. Aug. 29, 1992.

CHILD PROTECTION LAW
Act 238 of 1975

AN ACT to require the reporting of child abuse and neglect by certain persons; to permit the reporting of child abuse and neglect by all persons; to provide for the protection of children who are abused or neglected; to authorize limited detainment in protective custody; to authorize medical examinations; to prescribe the powers and duties of the state department of social services to prevent child abuse and neglect; to prescribe certain powers and duties of local law enforcement agencies; to safeguard and enhance the welfare of children and preserve family life; to provide for the appointment of legal counsel; to provide for the abrogation of privileged communications; to provide civil and criminal immunity for certain persons; to provide rules of evidence in certain cases; to provide for confidentiality of records; to provide for the expungement of certain records; to prescribe penalties; and to repeal certain acts and parts of acts.

History: 1975, Act 238, Eff. Oct. 1, 1975;—Am. 1988, Act 372, Eff. Mar. 30, 1989.

The People of the State of Michigan enact:

722.621 Short title.

Sec. 1. This act shall be known and may be cited as the “child protection law”.

History: 1975, Act 238, Eff. Oct. 1, 1975.

722.622 Definitions.

Sec. 2. As used in this act:

(a) "Adult foster care location authorized to care for a child" means an adult foster care family home or adult foster care small group home as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703, in which a child is placed in accordance with section 5 of 1973 PA 116, MCL 722.115.

(b) "Attorney" means, if appointed to represent a child under the provisions referenced in section 10, an attorney serving as the child's legal advocate in the manner defined and described in section 13a of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(c) "Central registry" means the system maintained at the department that is used to keep a record of all reports filed with the department under this act in which relevant and accurate evidence of child abuse or neglect is found to exist.

(d) "Central registry case" means a child protective services case that the department classifies under sections 8 and 8d as category I or category II. For a child protective services case that was investigated before July 1, 1999, central registry case means an allegation of child abuse or neglect that the department substantiated.

(e) "Child" means a person under 18 years of age.

(f) "Child abuse" means harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy.

(g) "Child care organization" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(h) "Child care provider" means an owner, operator, employee, or volunteer of a child care organization or of an adult foster care location authorized to care for a child.

(i) "Child care regulatory agency" means the department of consumer and industry services or a successor state department that is responsible for the licensing or registration of child care organizations or the licensing of adult foster care locations authorized to care for a child.

(j) "Child neglect" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following:

(i) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(ii) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

(k) "Citizen review panel" means a panel established as required by section 106 of title I of the child abuse prevention and treatment act, Public Law 93-247, 42 U.S.C. 5106a.

(l) "Member of the clergy" means a priest, minister, rabbi, Christian science practitioner, or other religious practitioner, or similar functionary of a church, temple, or recognized religious body, denomination, or organization.

(m) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(n) "CPSI system" means the child protective service information system, which is an internal data system maintained within and by the department, and which is separate from the central registry and not subject to section 7.

(o) "Department" means the family independence agency.

(p) "Director" means the director of the department.

(q) "Expunge" means to physically remove or eliminate and destroy a record or report.

(r) "Lawyer-guardian ad litem" means an attorney appointed under section 10 who has the powers and duties referenced by section 10.

(s) "Local office file" means the system used to keep a record of a written report, document, or photograph filed with and maintained by a county or a regionally based office of the department.

(t) "Nonparent adult" means a person who is 18 years of age or older and who, regardless of the person's domicile, meets all of the following criteria in relation to a child:

(i) Has substantial and regular contact with the child.

(ii) Has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare.

(iii) Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.

(u) "Person responsible for the child's health or welfare" means a parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides, or, except when used in section 7(2)(e) or 8(8), nonparent adult; or an owner, operator, volunteer, or employee of 1 or more of the following:

(i) A licensed or registered child care organization.

(ii) A licensed or unlicensed adult foster care family home or adult foster care small group home as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

(v) "Relevant evidence" means evidence having a tendency to make the existence of a fact that is at issue more probable than it would be without the evidence.

(w) "Sexual abuse" means engaging in sexual contact or sexual penetration as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, with a child.

(x) "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in section 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(y) "Specified information" means information in a children's protective services case record related specifically to the department's actions in responding to a complaint of child abuse or neglect. Specified information does not include any of the following:

(i) Except as provided in this subparagraph regarding a perpetrator of child abuse or neglect, personal identification information for any individual identified in a child protective services record. The exclusion of personal identification information as specified information prescribed by this subparagraph does not include personal identification information identifying an individual alleged to have perpetrated child abuse or neglect, which allegation has been classified as a central registry case.

(ii) Information in a law enforcement report as provided in section 7(8).

(iii) Any other information that is specifically designated as confidential under other law.

(iv) Any information not related to the department's actions in responding to a report of child abuse or neglect.

(z) "Structured decision-making tool" means the department document labeled "DSS-4752 (P3) (3-95)" or a revision of that document that better measures the risk of future harm to a child.

(aa) "Substantiated" means a child protective services case classified as a central registry case.

(bb) "Unsubstantiated" means a child protective services case the department classifies under sections 8 and 8d as category III, category IV, or category V.

History: 1975, Act 238, Eff. Oct. 1, 1975;—Am. 1978, Act 252, Eff. Mar. 30, 1979;—Am. 1980, Act 511, Imd. Eff. Jan. 26, 1981;—Am. 1984, Act 418, Eff. Mar. 29, 1985;—Am. 1988, Act 372, Eff. Mar. 30, 1989;—Am. 1990, Act 212, Imd. Eff. Sept. 27, 1990;—Am. 1993, Act 251, Imd. Eff. Nov. 24, 1993;—Am. 1996, Act 581, Eff. Mar. 31, 1997;—Am. 1998, Act 428, Eff. Apr. 1, 1999;—Am. 1998, Act 483, Eff. Mar. 1, 1999;—Am. 1998, Act 484, Eff. July 1, 1999;—Am. 1998, Act 531, Eff. July 1, 1999;—Am. 2000, Act 45, Imd. Eff. Mar. 27, 2000;—Am. 2002, Act 661, Imd. Eff. Dec. 23, 2002;—Am. 2002, Act 693, Eff. Mar. 1, 2003;—Am. 2004, Act 563, Imd. Eff. Jan. 3, 2005.

722.623 Individual required to report child abuse or neglect; written report; transmitting

report to county department; copies to prosecuting attorney and probate court; conditions requiring transmission of report to law enforcement agency; exposure to or contact with methamphetamine production; pregnancy of or venereal disease in child less than 12 years of age.

Sec. 3. (1) An individual is required to report under this act as follows:

(a) A physician, dentist, physician's assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, social worker, licensed master's social worker, licensed bachelor's social worker, registered social service technician, social service technician, a person employed in a professional capacity in any office of the friend of the court, school administrator, school counselor or teacher, law enforcement officer, member of the clergy, or regulated child care provider who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the department. Within 72 hours after making the oral report, the reporting person shall file a written report as required in this act. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of the hospital, agency, or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. A notification to the person in charge of a hospital, agency, or school does not relieve the member of the staff of the hospital, agency, or school of the obligation of reporting to the department as required by this section. One report from a hospital, agency, or school is adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.

(b) A department employee who is 1 of the following and has reasonable cause to suspect child abuse or neglect shall make a report of suspected child abuse or neglect to the department in the same manner as required under subdivision (a):

- (i) Eligibility specialist.
- (ii) Family independence manager.
- (iii) Family independence specialist.
- (iv) Social services specialist.
- (v) Social work specialist.
- (vi) Social work specialist manager.
- (vii) Welfare services specialist.

(c) Any employee of an organization or entity that, as a result of federal funding statutes, regulations, or contracts, would be prohibited from reporting in the absence of a state mandate or court order. A person required to report under this subdivision shall report in the same manner as required under subdivision (a).

(2) The written report shall contain the name of the child and a description of the abuse or neglect. If possible, the report shall contain the names and addresses of the child's parents, the child's guardian, the persons with whom the child resides, and the child's age. The report shall contain other information available to the reporting person that might establish the cause of the abuse or neglect, and the manner in which the abuse or neglect occurred.

(3) The department shall inform the reporting person of the required contents of the written report at the time the oral report is made by the reporting person.

(4) The written report required in this section shall be mailed or otherwise transmitted to the county department of the county in which the child suspected of being abused or neglected is found.

(5) Upon receipt of a written report of suspected child abuse or neglect, the department may provide copies to the prosecuting attorney and the probate court of the counties in which the child suspected of being abused or neglected resides and is found.

(6) If an allegation, written report, or subsequent investigation of suspected child abuse or child neglect indicates a violation of sections 136b and 145c, sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, and 750.520b to 750.520g, or section 7401c of the public health code, 1978 PA 368, MCL 333.7401c, involving methamphetamine has occurred, or if the allegation, written report, or subsequent investigation indicates that the suspected child abuse or child neglect was committed by an individual who is not a person responsible for the child's health or welfare, including, but not limited to, a member of the clergy, a teacher, or a teacher's aide, the department shall transmit a copy of the allegation or written report and the results of any investigation to a law enforcement agency in the county in which the incident occurred. If an allegation, written report, or subsequent investigation indicates that the individual who committed the suspected abuse or neglect is a child care provider and the department believes that the

report has basis in fact, the department shall, within 24 hours of completion, transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child.

(7) If a local law enforcement agency receives an allegation or written report of suspected child abuse or child neglect or discovers evidence of or receives a report of an individual allowing a child to be exposed to or to have contact with methamphetamine production, and the allegation, written report, or subsequent investigation indicates that the child abuse or child neglect or allowing a child to be exposed to or to have contact with methamphetamine production, was committed by a person responsible for the child's health or welfare, the local law enforcement agency shall refer the allegation or provide a copy of the written report and the results of any investigation to the county department of the county in which the abused or neglected child is found, as required by subsection (1)(a). If an allegation, written report, or subsequent investigation indicates that the individual who committed the suspected abuse or neglect or allowed a child to be exposed to or to have contact with methamphetamine production, is a child care provider and the local law enforcement agency believes that the report has basis in fact, the local law enforcement agency shall transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child. Nothing in this subsection or subsection (1) shall be construed to relieve the department of its responsibilities to investigate reports of suspected child abuse or child neglect under this act.

(8) For purposes of this act, the pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age is reasonable cause to suspect child abuse and neglect have occurred.

(9) In conducting an investigation of child abuse or child neglect, if the department suspects that a child has been exposed to or has had contact with methamphetamine production, the department shall immediately contact the law enforcement agency in the county in which the incident occurred.

History: 1975, Act 238, Eff. Oct. 1, 1975;—Am. 1978, Act 252, Eff. Mar. 30, 1979;—Am. 1978, Act 573, Eff. Mar. 30, 1979;—Am. 1980, Act 511, Imd. Eff. Jan. 26, 1981;—Am. 1984, Act 418, Eff. Mar. 29, 1985;—Am. 1988, Act 372, Eff. Mar. 30, 1989;—Am. 1994, Act 177, Imd. Eff. June 20, 1994;—Am. 2002, Act 10, Imd. Eff. Feb. 14, 2002;—Am. 2002, Act 661, Imd. Eff. Dec. 23, 2002;—Am. 2002, Act 693, Eff. Mar. 1, 2003;—Am. 2006, Act 264, Imd. Eff. July 6, 2006;—Am. 2006, Act 583, Imd. Eff. Jan. 3, 2007;—Am. 2008, Act 300, Imd. Eff. Oct. 8, 2008.

722.623a Knowledge or suspicion of alcohol, controlled substance, or metabolite of controlled substance in body of newborn infant; report required; exception.

Sec. 3a. In addition to the reporting requirement in section 3, a person who is required to report suspected child abuse or neglect under section 3(1) and who knows, or from the child's symptoms has reasonable cause to suspect, that a newborn infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in his or her body shall report to the department in the same manner as required under section 3. A report is not required under this section if the person knows that the alcohol, controlled substance, or metabolite, or the child's symptoms, are the result of medical treatment administered to the newborn infant or his or her mother.

History: Add. 1996, Act 581, Eff. Mar. 31, 1997.

722.624 Persons permitted to report child abuse or neglect.

Sec. 4. In addition to those persons required to report child abuse or neglect under section 3, any person, including a child, who has reasonable cause to suspect child abuse or neglect may report the matter to the department or a law enforcement agency.

History: 1975, Act 238, Eff. Oct. 1, 1975;—Am. 1984, Act 418, Eff. Mar. 29, 1985.

722.625 Identity of reporting person; confidentiality; disclosure; immunity; good faith presumed.

Sec. 5. Except for records available under section 7(2)(a), (b), and (n), the identity of a reporting person is confidential subject to disclosure only with the consent of that person or by judicial process. A person acting in good faith who makes a report, cooperates in an investigation, or assists in any other requirement of this act is immune from civil or criminal liability that might otherwise be incurred by that action. A person making a report or assisting in any other requirement of this act is presumed to have acted in good faith. This immunity from civil or criminal liability extends only to acts done according to this act and does not extend to a negligent act that causes personal injury or death or to the malpractice of a physician that results in personal injury or death.

History: 1975, Act 238, Eff. Oct. 1, 1975;—Am. 1988, Act 372, Eff. Mar. 30, 1989;—Am. 1994, Act 393, Imd. Eff. Dec. 29, 1994;

722.626 Detention of child in temporary protective custody; preliminary hearing; examinations; report; medical evaluation.

Sec. 6. (1) If a child suspected of being abused or neglected is admitted to a hospital or brought to a hospital for outpatient services and the attending physician determines that the release of the child would endanger the child's health or welfare, the attending physician shall notify the person in charge and the department. The person in charge may detain the child in temporary protective custody until the next regular business day of the probate court, at which time the probate court shall order the child detained in the hospital or in some other suitable place pending a preliminary hearing as required by section 14 of chapter 12A of the probate code of 1939, 1939 PA 288, MCL 712A.14, or order the child released to the child's parent, guardian, or custodian.

(2) When a child suspected of being an abused or neglected child is seen by a physician, the physician shall make the necessary examinations, which may include physical examinations, x-rays, photographs, laboratory studies, and other pertinent studies. The physician's written report to the department shall contain summaries of the evaluation, including medical test results.

(3) If a report is made by a person other than a physician, or if the physician's report is not complete, the department may request a court order for a medical evaluation of the child. The department shall have a medical evaluation made without a court order if either of the following occurs:

(a) The child's health is seriously endangered and a court order cannot be obtained.

(b) The child is displaying symptoms suspected to be the result of exposure to or contact with methamphetamine production.

History: 1975, Act 238, Eff. Oct. 1, 1975;—Am. 1984, Act 418, Eff. Mar. 29, 1985;—Am. 2006, Act 266, Imd. Eff. July 6, 2006.

722.627 Central registry; availability of confidential records; closed court proceeding not required; notice to individuals; amending or expunging certain reports and records; hearing; evidence; release of reports compiled by law enforcement agency; information obtained by citizen review panel; dissemination of information to pursue sanctions for dereliction of duty by agency employee.

Sec. 7. (1) The department shall maintain a statewide, electronic central registry to carry out the intent of this act.

(2) Unless made public as specified information released under section 7d, a written report, document, or photograph filed with the department as provided in this act is a confidential record available only to 1 or more of the following:

(a) A legally mandated public or private child protective agency investigating a report of known or suspected child abuse or neglect or a legally mandated public or private child protective agency or foster care agency prosecuting a disciplinary action against its own employee involving child protective services or foster records.

(b) A police or other law enforcement agency investigating a report of known or suspected child abuse or neglect.

(c) A physician who is treating a child whom the physician reasonably suspects may be abused or neglected.

(d) A person legally authorized to place a child in protective custody when the person is confronted with a child whom the person reasonably suspects may be abused or neglected and the confidential record is necessary to determine whether to place the child in protective custody.

(e) A person, agency, or organization, including a multidisciplinary case consultation team, authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or record under this act, or who is responsible for the child's health or welfare.

(f) A person named in the report or record as a perpetrator or alleged perpetrator of the child abuse or neglect or a victim who is an adult at the time of the request, if the identity of the reporting person is protected as provided in section 5.

(g) A court that determines the information is necessary to decide an issue before the court.

(h) A grand jury that determines the information is necessary to conduct the grand jury's official business.

(i) A person, agency, or organization engaged in a bona fide research or evaluation project. The person, agency, or organization shall not release information identifying a person named in the report or record unless that person's written consent is obtained. The person, agency, or organization shall not conduct a personal interview with a family without the family's prior consent and shall not disclose information that would identify the child or the child's family or other identifying information. The department director may authorize

the release of information to a person, agency, or organization described in this subdivision if the release contributes to the purposes of this act and the person, agency, or organization has appropriate controls to maintain the confidentiality of personally identifying information for a person named in a report or record made under this act.

(j) A lawyer-guardian ad litem or other attorney appointed as provided by section 10.

(k) A child placing agency licensed under 1973 PA 116, MCL 722.111 to 722.128, for the purpose of investigating an applicant for adoption, a foster care applicant or licensee or an employee of a foster care applicant or licensee, an adult member of an applicant's or licensee's household, or other persons in a foster care or adoptive home who are directly responsible for the care and welfare of children, to determine suitability of a home for adoption or foster care. The child placing agency shall disclose the information to a foster care applicant or licensee under 1973 PA 116, MCL 722.111 to 722.128, or to an applicant for adoption.

(l) Family division of circuit court staff authorized by the court to investigate foster care applicants and licensees, employees of foster care applicants and licensees, adult members of the applicant's or licensee's household, and other persons in the home who are directly responsible for the care and welfare of children, for the purpose of determining the suitability of the home for foster care. The court shall disclose this information to the applicant or licensee.

(m) Subject to section 7a, a standing or select committee or appropriations subcommittee of either house of the legislature having jurisdiction over child protective services matters.

(n) The children's ombudsman appointed under the children's ombudsman act, 1994 PA 204, MCL 722.921 to 722.932.

(o) A child fatality review team established under section 7b and authorized under that section to investigate and review a child death.

(p) A county medical examiner or deputy county medical examiner appointed under 1953 PA 181, MCL 52.201 to 52.216, for the purpose of carrying out his or her duties under that act.

(q) A citizen review panel established by the department. Access under this subdivision is limited to information the department determines is necessary for the panel to carry out its prescribed duties.

(r) A child care regulatory agency.

(s) A foster care review board for the purpose of meeting the requirements of 1984 PA 422, MCL 722.131 to 722.139a.

(t) A local friend of the court office.

(3) Subject to subsection (9), a person or entity to whom information described in subsection (2) is disclosed shall make the information available only to a person or entity described in subsection (2). This subsection does not require a court proceeding to be closed that otherwise would be open to the public.

(4) If the department classifies a report of suspected child abuse or neglect as a central registry case, the department shall maintain a record in the central registry and, within 30 days after the classification, shall notify in writing each person who is named in the record as a perpetrator of the child abuse or neglect. The notice shall set forth the person's right to request expunction of the record and the right to a hearing if the department refuses the request. The notice shall state that the record may be released under section 7d. The notice shall not identify the person reporting the suspected child abuse or neglect.

(5) A person who is the subject of a report or record made under this act may request the department to amend an inaccurate report or record from the central registry and local office file. A person who is the subject of a report or record made under this act may request the department to expunge from the central registry a report or record in which no relevant and accurate evidence of abuse or neglect is found to exist. A report or record filed in a local office file is not subject to expunction except as the department authorizes, if considered in the best interest of the child.

(6) If the department refuses a request for amendment or expunction under subsection (5), or fails to act within 30 days after receiving the request, the department shall hold a hearing to determine by a preponderance of the evidence whether the report or record in whole or in part should be amended or expunged from the central registry on the grounds that the report or record is not relevant or accurate evidence of abuse or neglect. The hearing shall be held before a hearing officer appointed by the department and shall be conducted as prescribed by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(7) If the investigation of a report conducted under this act fails to disclose evidence of abuse or neglect, the information identifying the subject of the report shall be expunged from the central registry. If evidence of abuse or neglect exists, the department shall maintain the information in the central registry until the department receives reliable information that the perpetrator of the abuse or neglect is dead.

(8) In releasing information under this act, the department shall not include a report compiled by a police

agency or other law enforcement agency related to an ongoing investigation of suspected child abuse or neglect. This subsection does not prevent the department from releasing reports of convictions of crimes related to child abuse or neglect.

(9) A member or staff member of a citizen review panel shall not disclose identifying information about a specific child protection case to an individual, partnership, corporation, association, governmental entity, or other legal entity. A member or staff member of a citizen review panel is a member of a board, council, commission, or statutorily created task force of a governmental agency for the purposes of section 7 of 1964 PA 170, MCL 691.1407. Information obtained by a citizen review panel is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) An agency obtaining a confidential record under subsection (2)(a) may seek an order from the court having jurisdiction over the child or from the family division of the Ingham county circuit court that allows the agency to disseminate confidential child protective services or foster care information to pursue sanctions for alleged dereliction, malfeasance, or misfeasance of duty against an employee of the agency, to a recognized labor union representative of the employee's bargaining unit, or to an arbitrator or an administrative law judge who conducts a hearing involving the employee's alleged dereliction, malfeasance, or misfeasance of duty to be used solely in connection with that hearing. Information released under this subsection shall be released in a manner that maintains the greatest degree of confidentiality while allowing review of employee performance.

History: 1975, Act 238, Eff. Oct. 1, 1975;—Am. 1980, Act 511, Imd. Eff. Jan. 26, 1981;—Am. 1984, Act 418, Eff. Mar. 29, 1985;—Am. 1991, Act 78, Imd. Eff. July 18, 1991;—Am. 1993, Act 251, Imd. Eff. Nov. 24, 1993;—Am. 1994, Act 393, Imd. Eff. Dec. 29, 1994;—Am. 1995, Act 220, Imd. Eff. Dec. 1, 1995;—Am. 1995, Act 225, Imd. Eff. Dec. 14, 1995;—Am. 1997, Act 168, Eff. Mar. 31, 1998;—Am. 1998, Act 428, Eff. Apr. 1, 1999;—Am. 1998, Act 483, Eff. Mar. 1, 1999;—Am. 1998, Act 484, Eff. July 1, 1999;—Am. 1998, Act 485, Eff. Aug. 1, 1999;—Am. 2000, Act 45, Imd. Eff. Mar. 27, 2000;—Am. 2002, Act 661, Imd. Eff. Dec. 23, 2002;—Am. 2004, Act 563, Imd. Eff. Jan. 3, 2005;—Am. 2006, Act 621, Imd. Eff. Jan. 3, 2007;—Am. 2008, Act 300, Imd. Eff. Oct. 8, 2008.

722.627a Availability of information, reports, and records to legislature; disclosure of or keeping confidential information as misdemeanor.

Sec. 7a. (1) The department shall make information contained in the central registry and reports and records made pursuant to this act available to a standing or select committee or appropriations subcommittee of either house of the legislature having jurisdiction over protective services matters for children subject to all of the following:

(a) The department shall not provide confidential information protected by section 7 to the committee unless the committee members appointed and serving agree by roll call vote that the information is essential for the protection of Michigan children or for legislative oversight of the protective services program and that the confidential information will only be considered at a closed session of the committee. The affirmative vote required by this subdivision shall be by not less than the super majority required by section 7 of the open meetings act, Act No. 267 of the Public Acts of 1976, being section 15.267 of the Michigan Compiled Laws, and may serve as the vote required under that section for holding a closed session.

(b) In addition to compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, a closed session held under this section shall comply with all of the following:

(i) Tape recording, camera, or other electronic equipment for documenting the proceedings shall not be permitted in the closed session.

(ii) Attendance at the closed session shall be limited to committee members, other members of the legislature and legislative staff at the discretion of the chairperson, and staff members from the department designated by the director.

(2) A person who discloses or causes to be disclosed confidential information to which the person has gained access at a meeting held under this section is guilty of a misdemeanor. A person who keeps a confidential record or file, or a copy of a confidential record or file, at the conclusion of a closed session held under this section, which record or file is obtained at that meeting, is guilty of a misdemeanor.

History: Add. 1993, Act 251, Imd. Eff. Nov. 24, 1993.

722.627b Child fatality review team; membership; review of child fatality; training and orientation; creation of advisory committee; publication of annual report; transmission of report to governor and legislature; disclosure of information; member of review team as member for purposes of MCL 691.1407.

Sec. 7b. (1) By January 1, 1999, each county may have in place a standing child fatality review team. Two or more counties may appoint a single child fatality review team for those counties. The membership of a

child fatality review team shall consist of at least all of the following:

(a) A county medical examiner or deputy county medical examiner appointed under 1963 PA 181, MCL 52.201 to 52.216.

(b) A representative of a local law enforcement agency.

(c) A representative of the department.

(d) The county prosecuting attorney or a designated assistant county prosecutor.

(e) A representative of the department of community health or a local health department.

(2) A child fatality review team established under subsection (1) shall review each child fatality occurring in the county or counties that established the child fatality review team.

(3) The department shall make available to each child fatality review team established under subsection (1) professional, interagency training and orientation on the review of child fatalities. The department shall make available, as necessary, training on specific types of child fatalities, investigation techniques, and prevention initiatives.

(4) By January 1, 1998, the department shall establish a multiagency, multidisciplinary advisory committee to identify and make recommendations on policy and statutory changes pertaining to child fatalities and to guide statewide prevention, education, and training efforts.

(5) The advisory committee created under subsection (4) consists of the following:

(a) Two representatives of the family independence agency.

(b) Two representatives of the department of community health.

(c) One county medical examiner.

(d) One representative of law enforcement.

(e) One county prosecuting attorney.

(f) The children's ombudsman or his or her designee.

(6) Using the annual compilation of child fatalities reported by the state registrar under part 28 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899, and data received from the child fatality review teams established under subsection (1), the advisory committee established under subsection (4) shall publish an annual report on child fatalities. The advisory committee shall include in the report, at a minimum, all of the following:

(a) The total number of child fatalities and the type or cause of each child fatality.

(b) The number of child fatalities that occurred while the child was in foster care.

(c) The number of cases where the child's death occurred within 5 years after family preservation or family reunification.

(d) Trends in child fatalities.

(7) The advisory committee established under subsection (4) shall break down the information required under subsection (6) by county or by groups of counties as described in subsection (1). The information contained in the report is public information. The advisory committee shall not include identifying information of persons named in the report. The advisory committee shall transmit a copy of the report required under subsection (6) to the governor and to the standing committees of the legislature with jurisdiction over matters pertaining to child protection.

(8) Information obtained by a child fatality review team established under subsection (1) is confidential and may be disclosed by the child fatality review team only to the department, the children's ombudsman, the county prosecutor's office, local law enforcement, or another child fatality review team. The information is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) An individual who is a member of a child fatality review team established under subsection (1) or of the advisory committee established under subsection (4) is a member of a board, council, commission, or statutorily created task force of a governmental agency for the purposes of section 7 of 1964 PA 170, MCL 691.1407.

History: Add. 1997, Act 167, Eff. Mar. 31, 1998.

Compiler's note: In subsection (1)(a), the reference to "1963 PA 181" evidently should read "1953 PA 181."

722.627c Release of information from child protective services records or case in which child has died; decision by director; determination.

Sec. 7c. (1) Sections 7d to 7i govern the director's decisions to release specified information from child protective services records.

(2) The director shall release specified information in a child abuse or neglect case in which a child who was a part of the case has died.

(3) The director may designate another individual to act for the director under sections 7d to 7i, and a reference to the director under those sections applies to an individual designated by the director.

(4) For the purposes of sections 7d to 7i, a child's best interest shall be determined based on all of the following:

- (a) Protection of the child's safety.
- (b) Preservation of the child's physical, mental, and emotional health.
- (c) Consideration of the child's likelihood of establishing a successful and timely permanent family and community relationship.

(5) Sections 7d to 7i do not subject a report or record that is confidential under this act to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 1998, Act 428, Eff. Apr. 1, 1999;—Am. 2004, Act 563, Imd. Eff. Jan. 3, 2005.

722.627d Release of information by director; preliminary decision to release or deny information; extension of time period; evidence.

Sec. 7d. (1) Subject to sections 7c to 7i, at the director's initiative or upon written request, the director may release specified information. If a written request for specified information is submitted to the department, the director shall make a preliminary decision to release or to deny release of the specified information within 14 days after receipt of the request. After notifying the requester, the director may extend that time period for an additional 14 days if the additional time is necessary to research and compile the requested specified information.

(2) The director may release specified information under this section if there is clear and convincing evidence that either of the following is true:

(a) The release of the specified information is in the best interest of the child to whom the specified information relates.

(b) The release of the specified information is not in conflict with the best interest of the child to whom the specified information relates, and 1 or more of the following are true:

(i) The release is in the best interest of a member of the child's family or of an individual who resides in the same home in which the child resides. For the purposes of this subparagraph, the child's family includes the child's parents, legal guardians, grandparents, and siblings.

(ii) The release clarifies actions taken by the department on a specific case.

(iii) The report or record containing the specified information concerns a child who has died or concerns a member of that child's family.

(iv) All or part of the report or record containing the specified information is publicly disclosed in a judicial proceeding.

(v) A child abuse or neglect complaint or investigation to which the report or record containing the specified information relates has been part of the subject matter of a published or broadcast media story.

(vi) The report or record containing the specified information concerns a substantiated report of sexual abuse, serious injury, or life threatening harm involving the child or a sibling of the child identified in the request.

History: Add. 1998, Act 428, Eff. Apr. 1, 1999.

722.627e Release of information by director; prohibitions.

Sec. 7e. (1) The director shall not deny a request for specified information under section 7d based upon a desire to shield a lack of or an inappropriate performance by the department.

(2) Regardless of the director's determination that specified information may be released under section 7d, the director shall not release the specified information if 1 or more of the following are true:

(a) The request for release does not include information sufficient to identify the specific case to which the request relates.

(b) An investigation of the report of child abuse or neglect to which the specified information relates is in progress and the report has not been substantiated or unsubstantiated.

(c) A hearing is pending under section 7(6).

(d) There is an ongoing criminal investigation and, as determined by the local prosecuting attorney, release would interfere with the criminal investigation.

(e) The individual who submits the request is serving a sentence of imprisonment in a state, county, or federal correctional facility in this state or in another state.

(f) The child to whom the report or record relates is 18 years of age or older.

History: Add. 1998, Act 428, Eff. Apr. 1, 1999.

722.627f Release of information by director; preliminary decision to release or deny request; notice; final decision; writing; right to appeal.

Sec. 7f. (1) Not less than 14 days before specified information is released or within 14 days after making a decision to deny a request for release of specified information under section 7d, the director shall give notice as provided in this subsection and section 7g of a preliminary decision to release or to deny a request to release specified information. The notice shall be in writing and shall be made by personal service or by registered or certified mail, return receipt requested and deliverable to the addressee only. The notice shall include at least all of the following:

(a) The basis on which the specified information is being released or the basis for denial of the request for release.

(b) A statement that the decision becomes a final decision unless information that could be the basis for a different decision is submitted to the director in writing within 14 days after the notice is given.

(c) A statement that there is a right to appeal a final decision as provided in section 7h. The notice shall include information regarding where to file the appeal and describing appellate procedures.

(2) If, within 14 days after giving notice, the director does not receive information in writing that could be the basis for a different decision, the director's decision is final.

(3) If the director does receive information as described in subsection (2), the director shall make a final decision to release or deny a request to release the specified information within 7 days after receipt of the information. The director shall give notice of a final decision made under this subsection to each individual required to be notified under section 7g(1) or (2). The notice required by this subsection shall be in writing and shall include at least notification of the right to appeal a final decision as provided in section 7h.

History: Add. 1998, Act 428, Eff. Apr. 1, 1999.

722.627g Release of information by director; individuals to be notified.

Sec. 7g. (1) If the director decides to release specified information under section 7d, the department shall give each notice required under section 7f to each of the following:

(a) Each individual named in the report as a perpetrator or an alleged perpetrator of the child's abuse or neglect, unless the individual named in the report has been convicted of a crime relating to the abuse or neglect, and no appeal is pending.

(b) Each parent or legal guardian of the child.

(c) Each attorney representing the child who is the subject of the case, or representing an individual listed in subdivision (a) or (b), if the department has notice of that representation.

(d) The child's guardian ad litem.

(2) If the director denies a request for release of information under section 7d, the department shall notify only the requesting person.

(3) If an individual required to be notified under subsection (1)(a) is named as a perpetrator of child abuse or neglect in a report that contains specified information requested to be released, and that individual was not previously notified under section 7(4), the department shall notify that individual as required by section 7(4) not less than 14 days before the specified information is released. If an individual who is required to be notified under this subsection requests expunction of the record within 14 days after the notice is given, the specified information shall not be released under this section until the procedures governing expunction under section 7 are completed. If an individual who is required to be notified under this subsection does not request expunction within 14 days, the procedures for release of specified information under sections 7c to 7i shall be followed, and the individual does not have a right to appeal the decision to release.

History: Add. 1998, Act 428, Eff. Apr. 1, 1999.

722.627h Appeal of director's decision.

Sec. 7h. (1) Before the release of specified information under section 7d and except as provided in section 7g, an individual required to be notified under section 7g may appeal the director's decision to the circuit court. If an appeal is filed and the department notified before the release, the specified information shall not be released until the decision to release is upheld by the circuit court. If the director denies a request to release specified information under section 7d, within 30 days after notice of the denial, the person whose request is denied may file an appeal of the denial with the circuit court. The court shall uphold a decision to release or to deny release of specified information unless the court finds that the director's decision was an abuse of the director's discretion based upon the criteria for releasing or not releasing specified information prescribed by sections 7c to 7i.

(2) Proceedings on an appeal filed under this section are confidential, and any record of these proceedings shall not be released unless the court upholds a decision to release specified information or reverses the denial of a request for release. The court shall conduct its review so that a person whose request for specified information was denied does not have access to that specified information during the appeal proceedings.

(3) If the court reverses the director's decision to release or to deny release of specified information in an appeal under this section, the court may order the department to pay the appellant's costs and reasonable attorney fees that are related to the appeal.

History: Add. 1998, Act 428, Eff. Apr. 1, 1999.

722.627i Fee; federal assurances and waivers.

Sec. 7i. (1) The department may charge a fee for a copy of specified information released under section 7d in the same manner that a public body is authorized to charge a fee under section 4 of the freedom of information act, 1976 PA 442, MCL 15.234.

(2) Sections 7c to 7i shall not be enforced and the family independence agency shall not utilize or implement those provisions unless the family independence agency consults with and receives assurances from the federal government, including any necessary federal waivers, that utilization and implementation of those provisions do not jeopardize this state's receipt of federal money.

History: Add. 1998, Act 428, Eff. Apr. 1, 1999.

722.627j Individual not named in central registry case as perpetrator of child abuse or neglect; documentation; receipt of central registry clearance information; request; automated systems.

Sec. 7j. (1) Upon written request, the department may provide to an individual, or whoever is appropriate, documentation stating that the individual is not named in a central registry case as the perpetrator of child abuse or child neglect.

(2) An individual or the department may share the document provided in subsection (1) with whoever is appropriate for the purpose of seeking employment or serving as a volunteer.

(3) An employer, a person or agency to whom an individual is applying for employment, or a volunteer agency, with appropriate authorization and identification from the individual, may request and receive central registry clearance information.

(4) The department may develop an automated system that will allow an individual applying for child-related employment or seeking to volunteer in a capacity that would allow unsupervised access to a child for whom the individual is not a person responsible for that child's health or welfare to be listed in that system if a screening of the individual finds that he or she has not been named in a central registry case as the perpetrator of child abuse or child neglect. The automated system developed under this section shall provide for public access to the list of individuals who have been screened for the purposes of complying with this section. An automated system developed under this section shall have appropriate safeguards and procedures to ensure that information that is confidential under this act, state law, or federal law is not accessible or disclosed through that system.

History: Add. 2002, Act 716, Eff. Mar. 31, 2003;—Am. 2004, Act 563, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 374, Imd. Eff. Dec. 23, 2008.

722.628 Referring report or commencing investigation; informing parent or legal guardian of investigation; duties of department; assistance of and cooperation with law enforcement officials; procedures; procedures by prosecuting attorney; cooperation of school or other institution; information as to disposition of report; exception to reporting requirement; surrender of newborn; training of employees in rights of children and families; determination of open friend of the court case.

Sec. 8. (1) Within 24 hours after receiving a report made under this act, the department shall refer the report to the prosecuting attorney and the local law enforcement agency if the report meets the requirements of subsection (3)(a), (b), or (c) or section 3(6) or (9) or shall commence an investigation of the child suspected of being abused or neglected. Within 24 hours after receiving a report whether from the reporting person or from the department under subsection (3)(a), (b), or (c) or section 3(6) or (9), the local law enforcement agency shall refer the report to the department if the report meets the requirements of section 3(7) or shall commence an investigation of the child suspected of being abused or neglected or exposed to or who has had contact with methamphetamine production. If the child suspected of being abused or exposed to or who has had contact with methamphetamine production is not in the physical custody of the parent or legal guardian and informing the parent or legal guardian would not endanger the child's health or welfare, the agency or the department shall inform the child's parent or legal guardian of the investigation as soon as the agency or the department discovers the identity of the child's parent or legal guardian.

(2) In the course of its investigation, the department shall determine if the child is abused or neglected. The department shall cooperate with law enforcement officials, courts of competent jurisdiction, and appropriate

state agencies providing human services in relation to preventing, identifying, and treating child abuse and neglect; shall provide, enlist, and coordinate the necessary services, directly or through the purchase of services from other agencies and professions; and shall take necessary action to prevent further abuses, to safeguard and enhance the child's welfare, and to preserve family life where possible. In the course of an investigation, at the time that a department investigator contacts an individual about whom a report has been made under this act or contacts an individual responsible for the health or welfare of a child about whom a report has been made under this act, the department investigator shall advise that individual of the department investigator's name, whom the department investigator represents, and the specific complaints or allegations made against the individual. The department shall ensure that its policies, procedures, and administrative rules ensure compliance with the provisions of this act.

(3) In conducting its investigation, the department shall seek the assistance of and cooperate with law enforcement officials within 24 hours after becoming aware that 1 or more of the following conditions exist:

(a) Abuse or neglect is the suspected cause of a child's death.

(b) The child is the victim of suspected sexual abuse or sexual exploitation.

(c) Abuse or neglect resulting in severe physical injury to the child. For purposes of this subdivision and section 17, "severe physical injury" means an injury to the child that requires medical treatment or hospitalization and that seriously impairs the child's health or physical well-being.

(d) Law enforcement intervention is necessary for the protection of the child, a department employee, or another person involved in the investigation.

(e) The alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.

(f) The child has been exposed to or had contact with methamphetamine production.

(4) Law enforcement officials shall cooperate with the department in conducting investigations under subsections (1) and (3) and shall comply with sections 5 and 7. The department and law enforcement officials shall conduct investigations in compliance with the protocols adopted and implemented as required by subsection (6).

(5) Involvement of law enforcement officials under this section does not relieve or prevent the department from proceeding with its investigation or treatment if there is reasonable cause to suspect that the child abuse or neglect was committed by a person responsible for the child's health or welfare.

(6) In each county, the prosecuting attorney and the department shall develop and establish procedures for involving law enforcement officials as provided in this section. In each county, the prosecuting attorney and the department shall adopt and implement standard child abuse and neglect investigation and interview protocols using as a model the protocols developed by the governor's task force on children's justice as published in FIA Publication 794 (revised 8-98) and FIA Publication 779 (8-98), or an updated version of those publications.

(7) If there is reasonable cause to suspect that a child in the care of or under the control of a public or private agency, institution, or facility is an abused or neglected child, the agency, institution, or facility shall be investigated by an agency administratively independent of the agency, institution, or facility being investigated. If the investigation produces evidence of a violation of section 145c or sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.145c and 750.520b to 750.520g, the investigating agency shall transmit a copy of the results of the investigation to the prosecuting attorney of the county in which the agency, institution, or facility is located.

(8) A school or other institution shall cooperate with the department during an investigation of a report of child abuse or neglect. Cooperation includes allowing access to the child without parental consent if access is determined by the department to be necessary to complete the investigation or to prevent abuse or neglect of the child. The department shall notify the person responsible for the child's health or welfare about the department's contact with the child at the time or as soon afterward as the person can be reached. The department may delay the notice if the notice would compromise the safety of the child or child's siblings or the integrity of the investigation, but only for the time 1 of those conditions exists.

(9) If the department has contact with a child in a school, all of the following apply:

(a) Before contact with the child, the department investigator shall review with the designated school staff person the department's responsibilities under this act and the investigation procedure.

(b) After contact with the child, the department investigator shall meet with the designated school staff person and the child about the response the department will take as a result of contact with the child. The department may also meet with the designated school staff person without the child present and share additional information the investigator determines may be shared subject to the confidentiality provisions of this act.

(c) Lack of cooperation by the school does not relieve or prevent the department from proceeding with its responsibilities under this act.

(10) A child shall not be subjected to a search at a school that requires the child to remove his or her clothing to expose his buttocks or genitalia or her breasts, buttocks, or genitalia unless the department has obtained an order from a court of competent jurisdiction permitting such a search. If the access occurs within a hospital, the investigation shall be conducted so as not to interfere with the medical treatment of the child or other patients.

(11) The department shall enter each report made under this act that is the subject of a field investigation into the CPSI system. The department shall maintain a report entered on the CPSI system as required by this subsection until the child about whom the investigation is made is 18 years old or until 10 years after the investigation is commenced, whichever is later, or, if the case is classified as a central registry case, until the department receives reliable information that the perpetrator of the abuse or neglect is dead. Unless made public as specified information released under section 7d, a report that is maintained on the CPSI system is confidential and is not subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(12) After completing a field investigation and based on its results, the department shall determine in which single category, prescribed by section 8d, to classify the allegation of child abuse or neglect.

(13) Except as provided in subsection (14), upon completion of the investigation by the local law enforcement agency or the department, the law enforcement agency or department may inform the person who made the report as to the disposition of the report.

(14) If the person who made the report is mandated to report under section 3, upon completion of the investigation by the department, the department shall inform the person in writing as to the disposition of the case and shall include in the information at least all of the following:

- (a) What determination the department made under subsection (12) and the rationale for that decision.
- (b) Whether legal action was commenced and, if so, the nature of that action.
- (c) Notification that the information being conveyed is confidential.

(15) Information sent under subsection (14) shall not include personally identifying information for a person named in a report or record made under this act.

(16) Unless section 5 of chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.5, requires a physician to report to the department, the surrender of a newborn in compliance with chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20, is not reasonable cause to suspect child abuse or neglect and is not subject to the section 3 reporting requirement. This subsection does not apply to circumstances that arise on or after the date that chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20, is repealed. This subsection applies to a newborn whose birth is described in the born alive infant protection act, 2002 PA 687, MCL 333.1071 to 333.1073, and who is considered to be a newborn surrendered under the safe delivery of newborns law as provided in section 3 of chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.3.

(17) All department employees involved in investigating child abuse or child neglect cases shall be trained in the legal duties to protect the state and federal constitutional and statutory rights of children and families from the initial contact of an investigation through the time services are provided.

(18) The department shall determine whether there is an open friend of the court case regarding a child who is suspected of being abused or neglected if a child protective services investigation of child abuse and neglect allegations result in any of the following dispositions:

- (a) A finding that a preponderance of evidence indicates that there has been child abuse and neglect.
- (b) Emergency removal of the child for child abuse and neglect before the investigation is completed.
- (c) The family court takes jurisdiction on a petition and a child is maintained in his or her own home under the supervision of the department.
- (d) If 1 or more children residing in the home are removed and 1 or more children remain in the home.
- (e) Any other circumstances that the department determines are applicable and related to child safety.

(19) If the department determines that there is an open friend of the court case and the provisions of subsection (18) apply, the department shall notify the office of the friend of the court in the county in which the friend of the court case is open that there is an investigation being conducted under this act regarding that child and shall also report to the local friend of the court office when there is a change in that child's placement.

(20) Child protective services may report to the local friend of the court office any situation in which a parent, more than 3 times within 1 year or on 5 cumulative reports over several years, made unfounded reports to child protective services regarding alleged child abuse or neglect of his or her child.

(21) If the department determines that there is an open friend of the court case, the department shall provide noncustodial parents of a child who is suspected of being abused or neglected with the form developed by the department that has information on how to change a custody or parenting time court order.

History: 1975, Act 238, Eff. Oct. 1, 1975;—Am. 1978, Act 252, Eff. Mar. 30, 1979;—Am. 1984, Act 418, Eff. Mar. 29, 1985;—Am. 1988, Act 372, Eff. Mar. 30, 1989;—Am. 1997, Act 59, Eff. Oct. 1, 1997;—Am. 1997, Act 166, Eff. Mar. 31, 1998;—Am. 1998, Act 484, Eff. July 1, 1999;—Am. 2000, Act 45, Imd. Eff. Mar. 27, 2000;—Am. 2000, Act 234, Eff. Jan. 1, 2001;—Am. 2002, Act 690, Eff. Mar. 31, 2003;—Am. 2004, Act 195, Imd. Eff. July 8, 2004;—Am. 2006, Act 256, Imd. Eff. July 6, 2006;—Am. 2006, Act 583, Imd. Eff. Jan. 3, 2007;—Am. 2006, Act 630, Imd. Eff. Jan. 3, 2007;—Am. 2008, Act 46, Imd. Eff. Mar. 27, 2008;—Am. 2008, Act 300, Imd. Eff. Oct. 8, 2008.

722.628a Execution of notices by prosecuting attorney of individuals bound over to circuit court for certain crimes; notification upon final disposition; confidentiality.

Sec. 8a. (1) If an individual is bound over to circuit court for any of the following crimes, the prosecuting attorney shall execute the notices as prescribed by subsections (2) to (5):

(a) Criminal sexual conduct in the first, second, or third degree in violation of section 520b, 520c, or 520d of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d.

(b) Assault with intent to commit criminal sexual conduct in violation of section 520g of the Michigan penal code, 1931 PA 328, MCL 750.520g.

(c) A felonious attempt or a felonious conspiracy to commit criminal sexual conduct.

(d) An assault on a child that is punishable as a felony.

(e) Child abuse in the first, second, or third degree, in violation of section 136b of the Michigan penal code, 1931 PA 328, MCL 750.136b.

(f) Involvement in child sexually abusive material or child sexually abusive activity in violation of section 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(2) If the individual is an employee of a nonpublic school as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5, the prosecuting attorney shall notify the governing body of the nonpublic school.

(3) If the individual is an employee of a school district or intermediate school district, the prosecuting attorney shall notify the superintendent of the school district or intermediate school district.

(4) If the individual is an employee of the department who provides a service to children and youth as described in section 115 of the social welfare act, 1939 PA 280, MCL 400.115, the prosecuting attorney shall notify the county director of social services or the superintendent of the training school.

(5) If the individual is a child care provider, the prosecuting attorney shall notify the department, the owner or operator of the child care provider's child care organization or adult foster care location authorized to care for a child, and the child care regulatory agency with authority over that child care organization or adult foster care location authorized to care for a child.

(6) Upon final disposition of a criminal matter for which a notice was given under subsections (2) to (5), the prosecuting attorney shall notify each person previously notified under subsections (2) to (5) of that disposition.

(7) A person who is notified or otherwise receives information under this section shall keep the information received confidential except so far as disclosure is necessary to take appropriate action in response to the information.

History: Add. 1992, Act 39, Eff. Mar. 31, 1993;—Am. 2002, Act 661, Imd. Eff. Dec. 23, 2002.

722.628b Referral of case to prosecuting attorney; review.

Sec. 8b. (1) If a central registry case involves a child's death, serious physical injury of a child, or sexual abuse or exploitation of a child, the department shall refer the case to the prosecuting attorney for the county in which the child is located. The prosecuting attorney shall review the investigation of the case to determine if the investigation complied with the protocol adopted as required by section 8.

(2) If a central registry case involves a child's exposure to or contact with methamphetamine production, the department shall refer the case to the prosecuting attorney for the county in which the child is located. The prosecuting attorney shall review the investigation of the case to determine whether the investigation complied with the protocol adopted as required by section 8.

History: Add. 1997, Act 168, Eff. Mar. 31, 1998;—Am. 1998, Act 484, Eff. July 1, 1999;—Am. 2006, Act 263, Imd. Eff. July 6, 2006.

722.628c Interview with child.

Sec. 8c. During an investigation of suspected child abuse or neglect, the child reported to have been abused or neglected shall not be interviewed in the presence of an individual suspected to have perpetrated the abuse.

History: Add. 1997, Act 168, Eff. Mar. 31, 1998.

722.628d Categories and departmental response; listing in child abuse or neglect registry;

report to legislature.

Sec. 8d. (1) For the department's determination required by section 8, the categories, and the departmental response required for each category, are the following:

(a) Category V - services not needed. Following a field investigation, the department determines that there is no evidence of child abuse or neglect.

(b) Category IV - community services recommended. Following a field investigation, the department determines that there is not a preponderance of evidence of child abuse or neglect, but the structured decision-making tool indicates that there is future risk of harm to the child. The department shall assist the child's family in voluntarily participating in community-based services commensurate with the risk to the child.

(c) Category III - community services needed. The department determines that there is a preponderance of evidence of child abuse or neglect, and the structured decision-making tool indicates a low or moderate risk of future harm to the child. The department shall assist the child's family in receiving community-based services commensurate with the risk to the child. If the family does not voluntarily participate in services, or the family voluntarily participates in services, but does not progress toward alleviating the child's risk level, the department shall consider reclassifying the case as category II.

(d) Category II - child protective services required. The department determines that there is evidence of child abuse or neglect, and the structured decision-making tool indicates a high or intensive risk of future harm to the child. The department shall open a protective services case and provide the services necessary under this act. The department shall also list the perpetrator of the child abuse or neglect, based on the report that was the subject of the field investigation, on the central registry, either by name or as "unknown" if the perpetrator has not been identified.

(e) Category I - court petition required. The department determines that there is evidence of child abuse or neglect and 1 or more of the following are true:

(i) A court petition is required under another provision of this act.

(ii) The child is not safe and a petition for removal is needed.

(iii) The department previously classified the case as category II and the child's family does not voluntarily participate in services.

(iv) There is a violation, involving the child, of a crime listed or described in section 8a(1)(b), (c), (d), or (f) or of child abuse in the first or second degree as prescribed by section 136b of the Michigan penal code, 1931 PA 328, MCL 750.136b.

(2) In response to a category I classification, the department shall do all of the following:

(a) If a court petition is not required under another provision of this act, submit a petition for authorization by the court under section 2(b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

(b) Open a protective services case and provide the services necessary under this act.

(c) List the perpetrator of the child abuse or neglect, based on the report that was the subject of the field investigation, on the central registry, either by name or as "unknown" if the perpetrator has not been identified.

(3) The department is not required to use the structured decision-making tool for a nonparent adult who resides outside the child's home who is the victim or alleged victim of child abuse or neglect or for an owner, operator, volunteer, or employee of a licensed or registered child care organization or a licensed or unlicensed adult foster care family home or adult foster care small group home as those terms are defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

(4) If following a field investigation the department determines that there is a preponderance of evidence that an individual listed in subsection (3) was the perpetrator of child abuse or neglect, the department shall list the perpetrator of the child abuse or neglect on the central registry.

(5) The department shall furnish a written report described in subsection (6) to the appropriate legislative standing committees and the house and senate appropriations subcommittees for the department within 4 months after each of the following time periods:

(a) Beginning October 1, 2005 and ending September 30, 2006.

(b) Beginning October 1, 2006 and ending September 30, 2007.

(c) Beginning October 1, 2007 and ending September 30, 2008.

(6) The department shall include in a report required by subsection (5) at least all of the following information regarding all families that were classified in category III at some time during the time period covered by the report:

(a) The total number of families classified in category III.

(b) The number of cases in category III closed or reclassified during the time period covered by the report

categorized as follows:

- (i) The number of cases referred to voluntary community services and closed with no additional monitoring.
 - (ii) The number of cases referred to voluntary community services and monitored for up to 90 days.
 - (iii) The number of cases for which the department entered more than 1 determination that there was evidence of child abuse or neglect.
 - (iv) The number of cases that the department reclassified from category III to category II.
 - (v) The number of cases that the department reclassified from category III to category I.
 - (vi) The number of cases that the department reclassified from category III to category I that resulted in a removal.
- (c) For the periods described in subsection (5)(b) and (c), the number of cases that the department reclassified in each of subparagraphs (iv), (v), and (vi) of subdivision (b) that were referred to and provided voluntary community services before being reclassified by the department.

History: Add. 1998, Act 484, Eff. July 1, 1999;—Am. 2000, Act 45, Imd. Eff. Mar. 27, 2000;—Am. 2002, Act 661, Imd. Eff. Dec. 23, 2002;—Am. 2006, Act 618, Imd. Eff. Jan. 3, 2007.

722.629 Multidisciplinary services; biennial report; continuing education programs; dissemination of information.

Sec. 9. (1) The department, in discharging its responsibilities under this act, shall provide, directly or through the purchase of services from other agencies and professions, multidisciplinary services such as those of a pediatrician, psychologist, psychiatrist, public health nurse, social worker, or attorney through the establishment of regionally based or strategically located teams. The department shall prepare a biennial report to the legislature containing information on the activities of the teams created pursuant to this subsection and including recommendations by the teams and the department regarding child abuse and neglect when committed by persons responsible for the child's health or welfare.

(2) The department shall assure a continuing education program for department, probate court, and private agency personnel. The program shall include responsibilities, obligations, and powers under this act and the diagnosis and treatment of child abuse and neglect when committed by persons responsible for the child's health or welfare.

(3) The department shall provide for the dissemination of information to the general public with respect to the problem of child abuse and neglect in this state and the facilities, prevention, and treatment methods available to combat child abuse and neglect when committed by persons responsible for the child's health or welfare.

History: 1975, Act 238, Eff. Oct. 1, 1975;—Am. 1984, Act 418, Eff. Mar. 29, 1985;—Am. 1988, Act 372, Eff. Mar. 30, 1989.

722.629a Annual report.

Sec. 9a. The agency within the department that is responsible for administering and providing services under this act shall make an annual comprehensive report to the legislature that includes at least all of the following:

- (a) Statistical information including at least all of the following:
 - (i) Total reports of abuse and neglect investigated under this act and the number that were substantiated and unsubstantiated.
 - (ii) Characteristics of perpetrators of abuse and neglect and the child victims such as age, sex, relationship, socioeconomic status, race, and ethnicity.
 - (iii) The occupation or description listed under section 3 in which the individual who made the report fits, or other description if the individual is not within a group required to report under this act.
 - (iv) Statistics relating to the central registry such as number of individuals and their characteristics.
 - (v) Statistics relating to the basis for determining that reported cases of abuse or neglect are unsubstantiated.
- (b) Policy related to child protective services including, but not limited to, major policy changes and court decisions affecting the administration of this act.

History: Add. 1998, Act 428, Eff. Apr. 1, 1999.

722.630 Lawyer-guardian ad litem.

Sec. 10. In each case filed under this act in which judicial proceedings are necessary, the court shall appoint a lawyer-guardian ad litem to represent the child. A lawyer-guardian ad litem represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d. All provisions of section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d, apply

to a lawyer-guardian ad litem appointed under this act.

History: 1975, Act 238, Eff. Oct. 1, 1975;—Am. 1998, Act 483, Eff. Mar. 1, 1999.

722.631 Privileged communications.

Sec. 11. Any legally recognized privileged communication except that between attorney and client or that made to a member of the clergy in his or her professional character in a confession or similarly confidential communication is abrogated and shall not constitute grounds for excusing a report otherwise required to be made or for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this act. This section does not relieve a member of the clergy from reporting suspected child abuse or child neglect under section 3 if that member of the clergy receives information concerning suspected child abuse or child neglect while acting in any other capacity listed under section 3.

History: 1975, Act 238, Eff. Oct. 1, 1975;—Am. 2002, Act 693, Eff. Mar. 1, 2003.

722.632 Report to law enforcement officials or probate court.

Sec. 12. This act shall not prohibit a person who has reasonable cause to suspect child abuse or neglect from making a report to the appropriate law enforcement officials or probate court.

History: 1975, Act 238, Eff. Oct. 1, 1975.

722.632a Investigations by hospital, school, or other agency.

Sec. 12a. This act does not preclude or hinder a hospital, school, or other agency from investigating reported claims of child abuse or neglect by its employees or from taking disciplinary action based upon that investigation against its employees.

History: Add. 1988, Act 372, Eff. Mar. 30, 1989.

722.633 Failure to report suspected child abuse or neglect; damages; violation as misdemeanor; unauthorized dissemination of information as misdemeanor; civil liability; maintaining report or record required to be expunged as misdemeanor; false report of child abuse or neglect.

Sec. 13. (1) A person who is required by this act to report an instance of suspected child abuse or neglect and who fails to do so is civilly liable for the damages proximately caused by the failure.

(2) A person who is required by this act to report an instance of suspected child abuse or neglect and who knowingly fails to do so is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(3) Except as provided in section 7, a person who disseminates, or who permits or encourages the dissemination of, information contained in the central registry and in reports and records made as provided in this act is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both, and is civilly liable for the damages proximately caused by the dissemination.

(4) A person who willfully maintains a report or record required to be expunged under section 7 is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.

(5) A person who intentionally makes a false report of child abuse or neglect under this act knowing that the report is false is guilty of a crime as follows:

(a) If the child abuse or neglect reported would not constitute a crime or would constitute a misdemeanor if the report were true, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.

(b) If the child abuse or neglect reported would constitute a felony if the report were true, the person is guilty of a felony punishable by the lesser of the following:

(i) The penalty for the child abuse or neglect falsely reported.

(ii) Imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

History: 1975, Act 238, Eff. Oct. 1, 1975;—Am. 1978, Act 252, Eff. Mar. 30, 1979;—Am. 1984, Act 418, Eff. Mar. 29, 1985;—Am. 1988, Act 372, Eff. Mar. 30, 1989;—Am. 1993, Act 56, Imd. Eff. June 9, 1993;—Am. 1994, Act 393, Imd. Eff. Dec. 29, 1994;—Am. 1996, Act 309, Eff. Jan. 1, 1997;—Am. 2002, Act 14, Imd. Eff. Feb. 19, 2002.

722.634 Religious beliefs.

Sec. 14. A parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian. This section shall not preclude a court from ordering the provision of medical services or nonmedical remedial services recognized by state law to a child where the child's health requires it nor does it

abrogate the responsibility of a person required to report child abuse or neglect.

History: 1975, Act 238, Eff. Oct. 1, 1975.

722.635 Repeal of MCL 722.571 to 722.575.

Sec. 15. Act No. 98 of the Public Acts of 1964, being sections 722.571 to 722.575 of the Compiled Laws of 1970, is repealed.

History: 1975, Act 238, Eff. Oct. 1, 1975.

722.636 Effective date.

Sec. 16. This act shall take effect October 1, 1975.

History: 1975, Act 238, Eff. Oct. 1, 1975.

722.637 Submission of petition for authorization under MCL 712A.2; exception.

Sec. 17. (1) Except as provided in subsection (2), within 24 hours after the department determines that a child was severely physically injured as defined in section 8, sexually abused, or allowed to be exposed to or have contact with methamphetamine production, the department shall submit a petition for authorization by the court under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2.

(2) The department is not required to file a petition for authorization by the court as described in subsection (1) if the department determines that the parent or legal guardian is not a suspected perpetrator of the abuse and the department determines that all of the following apply:

(a) The parent or legal guardian did not neglect or fail to protect the child.

(b) The parent or legal guardian does not have a historical record that shows a documented pattern of neglect or failing to protect the child.

(c) The child is safe in the parent's or legal guardian's care.

History: Add. 1997, Act 168, Eff. Mar. 31, 1998;—Am. 2006, Act 256, Imd. Eff. July 6, 2006;—Am. 2006, Act 630, Imd. Eff. Jan. 3, 2007.

722.638 Submission of petition for authorization under MCL 712A.2; conditions; request for termination of parental rights; conference.

Sec. 18. (1) The department shall submit a petition for authorization by the court under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, if 1 or more of the following apply:

(a) The department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included 1 or more of the following:

(i) Abandonment of a young child.

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

(iii) Battering, torture, or other severe physical abuse.

(iv) Loss or serious impairment of an organ or limb.

(v) Life threatening injury.

(vi) Murder or attempted murder.

(b) The department determines that there is risk of harm to the child and either of the following is true:

(i) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.

(ii) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.

(2) In a petition submitted as required by subsection (1), if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the family independence agency shall include a request for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIIA of 1939 PA 288, MCL 712A.19b.

(3) If the department is considering petitioning for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIIA of 1939 PA 288, MCL 712A.19b, even though the facts of the child's case do not require departmental action under subsection (1), the department shall hold a conference among the appropriate agency personnel to agree upon the course of action. The department shall notify the attorney representing the child of the time and place of the conference, and the attorney may attend. If an agreement is not reached at this conference, the department director or the director's designee shall resolve the disagreement after consulting the attorneys representing both the department and the child.

History: Add. 1997, Act 168, Eff. Mar. 31, 1998;—Am. 1998, Act 383, Eff. Mar. 23, 1999;—Am. 1998, Act 428, Imd. Eff. Dec. 30, 1998.

YOUTH TOBACCO ACT Act 31 of 1915

AN ACT to prohibit the selling, giving, or furnishing of tobacco products to minors; to prohibit the purchase, possession, or use of tobacco products by minors; to regulate the retail sale of tobacco products; to prescribe penalties; and to prescribe the powers and duties of certain state agencies and departments.

History: 1915, Act 31, Eff. Aug. 24, 1915;—Am. 1988, Act 314, Eff. Mar. 30, 1989;—Am. 1992, Act 272, Imd. Eff. Dec. 16, 1992;—Am. 2006, Act 236, Eff. Sept. 1, 2006.

The People of the State of Michigan enact:

722.641 Selling, giving, or furnishing tobacco products to minor prohibited; misdemeanor; penalty; sign required; copies of sign; affirmative defense; notice; rebuttal testimony; notice of rebuttal; exception.

Sec. 1. (1) A person shall not sell, give, or furnish a tobacco product to a minor. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$50.00 for each violation.

(2) A person who sells tobacco products at retail shall post, in a place close to the point of sale and conspicuous to both employees and customers, a sign produced by the department of community health that includes the following statement:

"The purchase of tobacco products by a minor under 18 years of age and the provision of tobacco products to a minor are prohibited by law. A minor unlawfully purchasing or using tobacco products is subject to criminal penalties."

(3) If the sign required under subsection (2) is more than 6 feet from the point of sale, it shall be 5-1/2 inches by 8-1/2 inches and the statement required under subsection (2) shall be printed in 36-point boldfaced type. If the sign required under subsection (2) is 6 feet or less from the point of sale, it shall be 2 inches by 4 inches and the statement required under subsection (2) shall be printed in 20-point boldfaced type.

(4) The department of community health shall produce the sign required under subsection (2) and have adequate copies of the sign ready for distribution to licensed wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products free of charge. Licensed wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products shall obtain copies of the sign from the department of community health and distribute them free of charge, upon request, to persons who are subject to subsection (2). The department of community health shall provide copies of the sign free of charge, upon request, to persons subject to subsection (2) who do not purchase their supply of tobacco products from wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products licensed under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436.

(5) It is an affirmative defense to a charge under subsection (1) that the defendant had in force at the time of arrest and continues to have in force a written policy to prevent the sale of tobacco products to persons under 18 years of age and that the defendant enforced and continues to enforce the policy. A defendant who proposes to offer evidence of the affirmative defense described in this subsection shall file and serve notice of the defense, in writing, upon the court and the prosecuting attorney. The notice shall be served not less than 14 days before the date set for trial.

(6) A prosecuting attorney who proposes to offer testimony to rebut the affirmative defense described in subsection (5) shall file and serve a notice of rebuttal, in writing, upon the court and the defendant. The notice shall be served not less than 7 days before the date set for trial and shall contain the name and address of each rebuttal witness.

(7) Subsection (1) does not apply to the handling or transportation of a tobacco product by a minor under the terms of that minor's employment.

History: 1915, Act 31, Eff. Aug. 24, 1915;—CL 1915, 5185;—CL 1929, 12826;—CL 1948, 722.641;—Am. 1972, Act 29, Imd. Eff. Feb. 19, 1972;—Am. 1988, Act 314, Eff. Mar. 30, 1989;—Am. 2006, Act 236, Eff. Sept. 1, 2006.

722.642 Prohibited conduct by minor; violation as misdemeanor; penalty; participation in health promotion and risk reduction assessment program; costs; community service; exceptions; other violations.

Sec. 2. (1) Subject to subsection (3), a minor shall not do any of the following:

(a) Purchase or attempt to purchase a tobacco product.

(b) Possess or attempt to possess a tobacco product.

(c) Use a tobacco product in a public place.

(d) Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or

her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product.

(2) An individual who violates subsection (1) is guilty of a misdemeanor punishable by a fine of not more than \$50.00 for each violation. Pursuant to a probation order, the court may also require an individual who violates subsection (1) to participate in a health promotion and risk reduction assessment program, if available. An individual who is ordered to participate in a health promotion and risk reduction assessment program under this subsection is responsible for the costs of participating in the program. In addition, an individual who violates subsection (1) is subject to the following:

(a) For the first violation, the court may order the individual to do 1 of the following:

(i) Perform not more than 16 hours of community service in a hospice, nursing home, or long-term care facility.

(ii) Participate in a health promotion and risk reduction program, as described in this subsection.

(b) For a second violation, in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than 32 hours of community service in a hospice, nursing home, or long-term care facility.

(c) For a third or subsequent violation, in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than 48 hours of community service in a hospice, nursing home, or long-term care facility.

(3) Subsection (1) does not apply to a minor participating in any of the following:

(a) An undercover operation in which the minor purchases or receives a tobacco product under the direction of the minor's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(b) An undercover operation in which the minor purchases or receives a tobacco product under the direction of the state police or a local police agency as part of an enforcement action, unless the initial or contemporaneous purchase or receipt of the tobacco product by the minor was not under the direction of the state police or the local police agency and was not part of the undercover operation.

(c) Compliance checks in which the minor attempts to purchase tobacco products for the purpose of satisfying federal substance abuse block grant youth tobacco access requirements, if the compliance checks are conducted under the direction of a substance abuse coordinating agency as defined in section 6103 of the public health code, 1978 PA 368, MCL 333.6103, and with the prior approval of the state police or a local police agency.

(4) Subsection (1) does not apply to the handling or transportation of a tobacco product by a minor under the terms of that minor's employment.

(5) This section does not prohibit the individual from being charged with, convicted of, or sentenced for any other violation of law arising out of the violation of subsection (1).

History: 1915, Act 31, Eff. Aug. 24, 1915;—CL 1915, 5186;—CL 1929, 12827;—CL 1948, 722.642;—Am. 1972, Act 29, Imd. Eff. Feb. 19, 1972;—Am. 1988, Act 314, Eff. Mar. 30, 1989;—Am. 2006, Act 236, Eff. Sept. 1, 2006.

722.642a Selling cigarette separately prohibited; exception; violation as misdemeanor; penalty.

Sec. 2a. (1) Except as otherwise provided in subsection (2), a person who sells tobacco products at retail shall not sell a cigarette separately from its package.

(2) Subsection (1) does not apply to a person who sells tobacco products at retail in a tobacco specialty retail store or other retail store that deals exclusively in the sale of tobacco products and smoking paraphernalia.

(3) A person who violates subsection (1) is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 for each offense.

History: Add. 1992, Act 272, Imd. Eff. Dec. 16, 1992.

722.643 Noninterference with right of parent or guardian.

Sec. 3. This act does not interfere with the right of a parent or legal guardian in the rearing and management of his or her minor children or wards within the bounds of his or her own private premises.

History: 1915, Act 31, Eff. Aug. 24, 1915;—CL 1915, 5187;—CL 1929, 12828;—CL 1948, 722.643;—Am. 1972, Act 29, Imd. Eff. Feb. 19, 1972;—Am. 1988, Act 314, Eff. Mar. 30, 1989.

722.644 Definitions.

Sec. 4. As used in this act:

(a) "Minor" means an individual under 18 years of age.

(b) "Person who sells tobacco products at retail" means a person whose ordinary course of business consists, in whole or in part, of the retail sale of tobacco products subject to state sales tax.

(c) "Public place" means a public street, sidewalk, or park or any area open to the general public in a publicly owned or operated building or public place of business.

(d) "Tobacco product" means a product that contains tobacco and is intended for human consumption, including, but not limited to, cigarettes, noncigarette smoking tobacco, or smokeless tobacco, as those terms are defined in section 2 of the tobacco products tax act, 1993 PA 327, MCL 205.422, and cigars.

(e) "Use a tobacco product" means to smoke, chew, suck, inhale, or otherwise consume a tobacco product.

History: Add. 1988, Act 314, Eff. Mar. 30, 1989;—Am. 1992, Act 272, Imd. Eff. Dec. 16, 1992;—Am. 2006, Act 236, Eff. Sept. 1, 2006.

Compiler's note: Previous section 4 of this act was not compiled.

722.645 Short title.

Sec. 5. This act shall be known and may be cited as the "youth tobacco act".

History: Add. 1988, Act 314, Eff. Mar. 30, 1989.

SELLING OR FURNISHING TOBACCO TO MINORS Act 77 of 1889

722.651, 722.652 Repealed. 1988, Act 314, Eff. Mar. 30, 1989.

**DISSEMINATING, EXHIBITING, OR DISPLAYING SEXUALLY EXPLICIT MATTER TO
MINORS
Act 33 of 1978**

AN ACT to prohibit the dissemination, exhibiting, or displaying of certain sexually explicit matter and ultra-violent explicit video games to minors; to prohibit certain misrepresentations facilitating the dissemination of sexually explicit matter and ultra-violent explicit video games to minors; to provide penalties and sanctions; to provide for declaratory judgments and injunctive relief in certain instances; to impose certain duties upon prosecuting attorneys and the circuit court; to preempt local units of government from proscribing certain conduct; and to repeal acts and parts of acts.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 2005, Act 108, Eff. Dec. 1, 2005.

The People of the State of Michigan enact:

**PART I
SEXUALLY EXPLICIT MATTER**

722.671 Definitions generally.

Sec. 1. As used in this part:

- (a) "Display" means to put or set out to view or to make visible.
- (b) "Disseminate" means to sell, lend, give, exhibit, show, or allow to examine or to offer or agree to do the same.
- (c) "Exhibit" means to do 1 or more of the following:
 - (i) Present a performance.
 - (ii) Sell, give, or offer to agree to sell or give a ticket to a performance.
 - (iii) Admit a minor to premises where a performance is being presented or is about to be presented.
- (d) "Minor" means a person less than 18 years of age.
- (e) "Restricted area" means any of the following:
 - (i) An area where sexually explicit matter is displayed only in a manner that prevents public view of the lower 2/3 of the matter's cover or exterior.
 - (ii) A building, or a distinct and enclosed area or room within a building, if access by minors is prohibited, notice of the prohibition is prominently displayed, and access is monitored to prevent minors from entering.
 - (iii) An area with at least 75% of its perimeter surrounded by walls or solid, nontransparent dividers that are sufficiently high to prevent a minor in a nonrestricted area from viewing sexually explicit matter within the perimeter if the point of access provides prominent notice that access to minors is prohibited.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 2003, Act 192, Eff. Jan. 1, 2004;—Am. 2005, Act 108, Eff. Dec. 1, 2005.

722.671a Repealed. 2003, Act 192, Eff. Jan. 1, 2004.

Compiler's note: The repealed section pertained to definitions; "C" to "I."

722.672 Additional definitions.

Sec. 2. As used in this part:

- (a) "Nudity" means the lewd display of the human male or female genitals or pubic area.
- (b) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (c) "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, for the purpose of sexual gratification or stimulation.
- (d) "Sodomasochistic abuse" means either of the following:
 - (i) Flagellation, or torture, for sexual stimulation or gratification, by or upon a person who is nude or clad only in undergarments or in a revealing or bizarre costume.
 - (ii) The condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification, of a person who is nude or clad only in undergarments or in a revealing or bizarre costume.
- (e) "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 2005, Act 108, Eff. Dec. 1, 2005.

722.673 Definitions.

Sec. 3. As used in this part:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(f) "Sexually explicit matter" means sexually explicit visual material, sexually explicit verbal material, or sexually explicit performance.

(g) "Sexually explicit performance" means a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse.

(h) "Sexually explicit verbal material" means a book, pamphlet, magazine, printed matter reproduced in any manner, or sound recording that contains an explicit and detailed verbal description or narrative account of sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse.

(i) "Sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film, video game, or similar visual representation that depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse, or a book, magazine, or pamphlet that contains such a visual representation. An undeveloped photograph, mold, or similar visual material may be sexually explicit material notwithstanding that processing or other acts may be required to make its sexually explicit content apparent.

(j) "Video game" means an object or device that stores recorded data or instructions generated by a person who uses it, and by processing the data or instructions creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, game console, or other technology.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 1999, Act 33, Eff. Aug. 1, 1999;—Am. 2003, Act 192, Eff. Jan. 1, 2004;—Am. 2005, Act 104, Eff. Dec. 1, 2005;—Am. 2005, Act 107, Eff. Dec. 1, 2005.

Constitutionality: Act 33 of 1999 violates the First Amendment and the Dormant Commerce Clause of the US Constitution. Defendants are permanently restrained and enjoined from enforcing any provisions of 1999 PA 33. Cyberspace Communications, Inc v. Engler, 142 F Supp 2d 827 (ED Mich, 2001).

722.674 Additional definitions.

Sec. 4. As used in this part:

(a) "Harmful to minors" means sexually explicit matter that meets all of the following criteria:

(i) Considered as a whole, it appeals to the prurient interest of minors as determined by contemporary local community standards.

(ii) It is patently offensive to contemporary local community standards of adults as to what is suitable for minors.

(iii) Considered as a whole, it lacks serious literary, artistic, political, educational, and scientific value for minors.

(b) "Local community" means the county in which the matter was disseminated.

(c) "Prurient interest" means a lustful interest in sexual stimulation or gratification. In determining whether sexually explicit matter appeals to the prurient interest, the matter shall be judged with reference to average 17-year-old minors. If it appears from the character of the matter that it is designed to appeal to the prurient interest of a particular group of persons, including, but not limited to, homosexuals or sadomasochists, then the matter shall be judged with reference to average 17-year-old minors within the particular group for which it appears to be designed.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 2005, Act 108, Eff. Dec. 1, 2005.

722.675 Disseminating sexually explicit matter to minor; felony; penalty.

Sec. 5. (1) A person is guilty of disseminating sexually explicit matter to a minor if that person does either of the following:

(a) Knowingly disseminates to a minor sexually explicit visual or verbal material that is harmful to minors.

(b) Knowingly exhibits to a minor a sexually explicit performance that is harmful to minors.

(2) A person knowingly disseminates sexually explicit matter to a minor if the person knows both the nature of the matter and the status of the minor to whom the matter is disseminated.

(3) A person knows the nature of matter if the person either is aware of its character and content or recklessly disregards circumstances suggesting its character and content.

(4) A person knows the status of a minor if the person either is aware that the person to whom the dissemination is made is under 18 years of age or recklessly disregards a substantial risk that the person to whom the dissemination is made is under 18 years of age.

(5) Disseminating sexually explicit matter to a minor is a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$10,000.00, or both. In imposing the fine, the court shall consider the scope of the defendant's commercial activity in disseminating sexually explicit matter to minors.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 1999, Act 33, Eff. Aug. 1, 1999;—Am. 2003, Act 192, Eff. Jan. 1, 2004.

Constitutionality: Act 33 of 1999 violates the First Amendment and the Dormant Commerce Clause of the US Constitution. Defendants are permanently restrained and enjoined from enforcing any provisions of 1999 PA 33. Cyberspace Communications, Inc v. Engler, 142 F Supp 2d 827 (ED Mich, 2001).

722.676 Persons excepted from MCL 722.675.

Sec. 6. Section 5 does not apply to the dissemination of sexually explicit matter to a minor by any of the following:

(a) A parent or guardian who disseminates sexually explicit matter to his or her child or ward unless the dissemination is for the sexual gratification of the parent or guardian.

(b) A teacher or administrator at a public or private elementary or secondary school that complies with the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, and who disseminates sexually explicit matter to a student as part of a school program permitted by law.

(c) A licensed physician or licensed psychologist who disseminates sexually explicit matter in the treatment of a patient.

(d) A librarian employed by a library of a public or private elementary or secondary school that complies with the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, or employed by a public library, who disseminates sexually explicit matter in the course of that person's employment.

(e) Any public or private college or university or any other person who disseminates sexually explicit matter for a legitimate medical, scientific, governmental, or judicial purpose.

(f) A person who disseminates sexually explicit matter that is a public document, publication, record, or other material issued by a state, local, or federal official, department, board, commission, agency, or other governmental entity, or an accurate republication of such a public document, publication, record, or other material.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 1999, Act 33, Eff. Aug. 1, 1999;—Am. 2003, Act 192, Eff. Jan. 1, 2004;—Am. 2005, Act 245, Eff. Feb. 1, 2006.

Constitutionality: Act 33 of 1999 violates the First Amendment and the Dormant Commerce Clause of the US Constitution. Defendants are permanently restrained and enjoined from enforcing any provisions of 1999 PA 33. Cyberspace Communications, Inc v. Engler, 142 F Supp 2d 827 (ED Mich, 2001).

722.677 Displaying sexually explicit matter to minor; misdemeanor; penalty.

Sec. 7. (1) A person is guilty of displaying sexually explicit matter to a minor if that person possesses managerial responsibility for a business enterprise selling sexually explicit visual material that visually depicts sexual intercourse or sadomasochistic abuse and is harmful to minors, and that person does either of the following:

(a) Knowingly permits a minor who is not accompanied by a parent or guardian to view that matter.

(b) Displays that matter knowing its nature, unless the person does so in a restricted area.

(2) A person knowingly permits a minor to view visual matter that depicts sexual intercourse or sadomasochistic abuse and is harmful to minors if the person knows both the nature of the matter and the status of the minor permitted to examine the matter.

(3) A person knows the nature of the matter if the person either is aware of its character and content or recklessly disregards circumstances suggesting its character and content.

(4) A person knows the status of a minor if the person either is aware that the person who is permitted to view the matter is under 18 years of age or recklessly disregards a substantial risk that the person who is permitted to view the matter is under 18 years of age.

(5) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$5,000.00, or both.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 1999, Act 33, Eff. Aug. 1, 1999;—Am. 2003, Act 192, Eff. Jan. 1, 2004.

Constitutionality: Act 33 of 1999 violates the First Amendment and the Dormant Commerce Clause of the US Constitution. Defendants are permanently restrained and enjoined from enforcing any provisions of 1999 PA 33. Cyberspace Communications, Inc v. Engler, 142 F Supp 2d 827 (ED Mich, 2001).

722.678 Facilitative misrepresentation; misdemeanor; penalty.

Sec. 8. (1) A person is guilty of facilitative misrepresentation when that person knowingly makes a false representation that he or she is the parent or guardian of a minor, or that a minor is 18 years of age or older, with the intent to facilitate the dissemination to the minor of sexually explicit matter that is harmful to minors.

(2) A person knowingly makes a false representation as to the age of a minor or as to the status of being the parent or guardian of a minor if the person either is aware that the representation is false or recklessly disregards a substantial risk that the representation is false.

(3) Facilitative misrepresentation is a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$5,000.00, or both.

History: 1978, Act 33, Eff. June 1, 1978.

722.679 Injunction.

Sec. 9. A prosecuting attorney may commence an action in the circuit court against a person, other than a person described in section 6, to enjoin that person from disseminating to a minor sexually explicit matter that is harmful to minors.

History: 1978, Act 33, Eff. June 1, 1978.

722.680 Advisory opinion as to legality of disseminating sexually explicit matter to minor; action for declaratory judgment; prosecuting attorney as defendant; counterclaim for injunctive relief; dismissal of action.

Sec. 10. (1) A person intending to disseminate to a minor matter that may be considered sexually explicit may request, from the prosecuting attorney of the county in which the dissemination is intended, an advisory opinion as to the legality of that dissemination. The request for an advisory opinion shall be in writing and shall be accompanied by a reasonable and timely opportunity for the prosecuting attorney to examine the matter. Not more than 5 business days after receipt of a proper request, the prosecuting attorney shall issue to the person making the request an advisory opinion, or a refusal to issue an advisory opinion, in writing. The advisory opinion shall state in unequivocal terms whether knowing dissemination of the matter to a minor would be considered by the prosecuting attorney to violate section 5.

(2) A person who has requested an advisory opinion may commence an action for a declaratory judgment in the circuit court in the same county to obtain an adjudication of the legality of the intended dissemination if either of the following conditions exist:

(a) The action is commenced more than 5 business days after submission of a proper request, and the prosecuting attorney has failed to issue an advisory opinion.

(b) The prosecuting attorney has issued an advisory opinion and that opinion fails to state in unequivocal terms that knowing dissemination of the matter to a minor would not be considered by the prosecuting attorney to violate section 5.

(3) The prosecuting attorney shall be made the defendant to an action commenced pursuant to subsection (2). In responding to the complaint, the prosecuting attorney may join a counterclaim for the injunctive relief permitted under section 9.

(4) If the prosecuting attorney, after commencement of the action, issues an advisory opinion stating in unequivocal terms that knowing dissemination of the matter to a minor would not be considered by the prosecuting attorney to violate section 5, the action shall be dismissed.

History: 1978, Act 33, Eff. June 1, 1978.

722.681 Provisions applicable to actions commenced pursuant to MCL 722.679 or MCL 722.680.

Sec. 11. The following provisions apply in an action commenced pursuant to section 9 or 10:

(a) The prosecuting attorney shall bear the burden of proving, by clear and convincing evidence, that knowing dissemination of the specified matter to a minor would violate section 5.

(b) Upon appropriate motion of the prosecuting attorney or order to show cause, the court may grant a preliminary injunction or ex parte restraining order. A person enjoined under this subdivision is entitled to a

trial on the legality of the intended dissemination within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days after the conclusion of the trial.

(c) The prosecuting attorney shall not be required to file any security before the granting of a preliminary injunction or restraining order, shall not be liable for costs, and shall not be liable for damages sustained by reason of the preliminary injunction or restraining order.

(d) The proceedings are equitable in nature.

History: 1978, Act 33, Eff. June 1, 1978.

722.682 Effect of MCL 722.679 to 722.681 on prosecutions under other laws; declaratory judgment or denial of injunction as defense; withdrawing opinion and obtaining injunction as conditions for prosecution under MCL 722.675; applicability of declaratory judgment or injunction.

Sec. 12. (1) Except as provided in this section, sections 9 to 11 shall not preclude or impair prosecution for violation of any law of this state.

(2) If a declaratory judgment has been obtained pursuant to sections 10 and 11, or an application for an injunction pursuant to section 9 has been denied, on the ground that the knowing dissemination to a minor of specified matter does not violate section 5, that determination is a complete defense for a person against a prosecution under section 5 based upon the dissemination of that specified matter and against a prosecution for violation of a preliminary injunction or restraining order granted pursuant to section 11.

(3) If a prosecuting attorney issues an advisory opinion stating in unequivocal terms that knowing dissemination of specified matter to a minor is not considered by the prosecuting attorney to violate section 5, then the recipient of the opinion may be prosecuted under section 5 for the dissemination of that specified matter only after the prosecutor has both withdrawn the opinion and obtained an injunction pursuant to section 9 against the dissemination of that specified material by that person.

(4) A declaratory judgment or injunction shall apply only to the county in which the prosecuting attorney serves.

History: 1978, Act 33, Eff. June 1, 1978.

722.682a Exceptions.

Sec. 12a. This part does not apply to any of the following:

(a) A medium of communication to the extent regulated by the federal communications commission.

(b) An internet service provider or computer network service provider that is not selling the sexually explicit matter being communicated but that provides the medium for communication of the matter. As used in this section, "internet service provider" means a person who provides a service that enables users to access content, information, electronic mail, or other services offered over the internet or a computer network.

(c) A person providing a subscription multichannel video service under terms of service that require the subscriber to meet both of the following conditions:

(i) The subscriber is not less than 18 years of age at the time of the subscription.

(ii) The subscriber proves that he or she is not less than 18 years of age through the use of a credit card, through the presentation of government-issued identification, or by other reasonable means of verifying the subscriber's age.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

722.683 Repeal of MCL 750.343e.

Sec. 13. Section 343e of Act No. 328 of the Public Acts of 1931, being section 750.343e of the Compiled Laws of 1970, is repealed.

History: 1978, Act 33, Eff. June 1, 1978.

722.684 Effective date.

Sec. 14. This act shall not take effect until June 1, 1978.

History: 1978, Act 33, Eff. June 1, 1978.

PART II

ULTRA-VIOLENT EXPLICIT VIDEO GAMES

722.685 Legislative findings.

Sec. 15. In light of section 51 of article IV of the state constitution of 1963, which directs that "The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.", and

after hearing from expert witnesses and law enforcement officials, considering the testimony of expert witnesses before other legislative bodies, and reviewing dozens of studies and metastudies of hundreds of studies, the legislature finds all of the following:

(a) Published research overwhelmingly finds that ultra-violent explicit video games are harmful to minors because minors who play ultra-violent explicit video games are consistently more likely to exhibit violent, asocial, or aggressive behavior and have feelings of aggression.

(b) Spokespersons for not less than 6 major national health associations have concluded and testified that after reviewing more than 1,000 studies, the studies "point overwhelmingly to a causal connection between media violence and aggressive behavior in some children", concluding that the effects of media violence on minors "are measurable and long-lasting".

(c) Law enforcement officers testified that recent statewide targeted enforcement efforts reveal that minors are capable of purchasing, and do purchase, ultra-violent explicit video games.

(d) Law enforcement officers testified about cases of minors acting out ultra-violent explicit video game behaviors by victimizing other citizens.

(e) The state has a legitimate and compelling interest in safeguarding both the physical and psychological well-being of minors.

(f) The state has a legitimate and compelling interest in preventing violent, aggressive, and asocial behavior from manifesting itself in minors.

(g) The state has a legitimate and compelling interest in directly and substantially alleviating the real-life harms perpetrated by minors who play ultra-violent explicit video games.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.686 Definitions.

Sec. 16. As used in this part:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(f) "Disseminate" means to sell, lend, give, exhibit, show, or allow to examine or to offer or agree to do the same.

(g) "Extreme and loathsome violence" means real or simulated graphic depictions of physical injuries or physical violence against parties who realistically appear to be human beings, including actions causing death, inflicting cruelty, dismemberment, decapitation, maiming, disfigurement, or other mutilation of body parts, murder, criminal sexual conduct, or torture.

(h) "Harmful to minors" means having all of the following characteristics:

(i) Considered as a whole, appeals to the morbid interest in asocial, aggressive behavior of minors as determined by contemporary local community standards.

(ii) Is patently offensive to contemporary local community standards of adults as to what is suitable for minors.

(iii) Considered as a whole, lacks serious literary, artistic, political, educational, or scientific value for minors.

(i) "Local community" means the county in which the video game was disseminated.

(j) "Minor" means a person less than 17 years of age.

(k) "Morbid interest in asocial, aggressive behavior" means a morbid interest in committing uncontrolled aggression against an individual. In determining whether an ultra-violent explicit video game appeals to this interest, the video game shall be judged with reference to average 16-year-old minors. If it appears from the character of the video game that it is designed to appeal to this interest of a particular group of persons, then the video game shall be judged with reference to average 16-year-old minors within the particular group for which it appears to be designed.

(l) "Ultra-violent explicit video game" means a video game that continually and repetitively depicts extreme and loathsome violence.

(m) "Video game" means an object or device that stores recorded data or instructions generated by a person who uses it, and by processing the data or instructions creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, game console, or other technology.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.687 Dissemination of ultra-violent explicit video game to minor; prohibition; violation; penalties.

Sec. 17. (1) A person shall not knowingly disseminate to a minor an ultra-violent explicit video game that is harmful to minors. Except as provided in subsections (2) and (3), a person who violates this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$5,000.00.

(2) A person who violates subsection (1) and who has 1 prior determination of responsibility under this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$15,000.00.

(3) A person who violates subsection (1) and who has 2 or more prior determinations of responsibility under this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$40,000.00. In imposing a fine under this subsection, the court shall consider the scope of the defendant's commercial activity in disseminating ultra-violent explicit video games to minors.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.688 Exceptions.

Sec. 18. Section 17 does not apply to the dissemination of an ultra-violent explicit video game to a minor by any of the following:

(a) A parent or guardian who disseminates an ultra-violent explicit video game to his or her child or ward.

(b) An immediate family member of the minor who disseminates an ultra-violent explicit video game to the minor in the immediate family member's residence or the minor's residence.

(c) An individual who disseminates an ultra-violent video game to a minor who is a guest in the individual's residence.

(d) An individual who disseminates an ultra-violent explicit video game for a legitimate medical, scientific, governmental, or judicial purpose.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.689 False representation as to age or status as parent or guardian; violation; penalty.

Sec. 19. (1) A person shall not knowingly make a false representation that he or she is the parent or guardian of a minor, or that a minor is 17 years of age or older, with the intent to facilitate the dissemination to the minor of an ultra-violent explicit video game that is harmful to minors. A person knowingly makes a false representation as to the age of a minor or as to the status of being the parent or guardian of a minor if the person either is aware that the representation is false or recklessly disregards a substantial risk that the representation is false.

(2) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not

more than 93 days or a fine of not more than \$15,000.00, or both.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.690 Manager of business enterprise renting or selling ultra-violent explicit video games; permitting minor to play or view prohibited; violation; penalty.

Sec. 20. A person who possesses managerial responsibility for a business enterprise renting or selling ultra-violent explicit video games that are harmful to minors shall not knowingly permit a minor who is not accompanied by a parent or guardian to play or view the playing of an ultra-violent explicit video game that is harmful to minors. A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$25,000.00, or both.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.691 Knowingly disseminating ultra-violent explicit video game.

Sec. 21. (1) A person knowingly disseminates an ultra-violent explicit video game to a minor if the person knows both the nature of the video game and the status of the minor to whom the video game is disseminated.

(2) A person knows the nature of the ultra-violent explicit video game if the person either is aware of its character and content or recklessly disregards circumstances suggesting its character and content.

(3) A person knows the status of a minor if the person either is aware that the person to whom the dissemination is made is a minor or recklessly disregards a substantial risk that the person to whom the dissemination is made is a minor.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.692 Violation arising from same transaction.

Sec. 22. A conviction, sentence, or determination of responsibility for a violation of this part does not preclude a conviction, sentence, or determination of responsibility for a violation of any other law of this state arising from the same transaction.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.693 Good faith as defense.

Sec. 23. (1) It is an affirmative defense to an alleged violation under this part that the person acted in good faith. Except as provided in subsection (2), good faith exists if at the time the alleged violation occurs all of the following conditions are satisfied:

(a) The minor shows the person identification that appears to be valid and that contains a photograph and a date of birth purporting to show that the minor is 17 years of age or older, or the service terms of the internet provider of a seller or rental enterprise that sells or rents ultra-violent explicit video games over the internet require a purchaser or renter to be 17 years of age or older if all of the following conditions are met:

(i) The ultra-violent explicit video game is purchased or rented over the internet.

(ii) The ultra-violent explicit video game is sent to the purchaser's or renter's home or place of residence or otherwise made directly available through the internet to the purchaser or renter.

(iii) The purchaser or renter of the ultra-violent explicit video game uses a credit card to purchase or rent the ultra-violent explicit video game.

(b) The person does not have independent knowledge that the minor is under 17 years of age.

(c) Relying upon information described in subdivisions (a) and (b), the person complies with a rating system established by the pertinent entertainment industry that does not conflict with this part.

(2) If the person possesses managerial responsibility for a business enterprise, good faith exists if at the time the alleged violation occurs the business enterprise satisfies all of the following conditions:

(a) The business enterprise has in existence a policy that its employees are required to comply with a rating system established by the pertinent entertainment industry that does not conflict with this part.

(b) The business enterprise trains its employees to follow the policy described in subdivision (a).

(c) The business enterprise enforces the policy described in subdivision (a).

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

CHILD WELFARE COMMISSION

Act 293 of 1917

722.701-722.703 Repealed. 1964, Act 256, Eff. Aug. 28, 1964.

THE PATERNITY ACT Act 205 of 1956

AN ACT to confer upon circuit courts jurisdiction over proceedings to compel and provide support of children born out of wedlock; to prescribe the procedure for determination of such liability; to authorize agreements providing for furnishing of such support and to provide for the enforcement thereof; and to prescribe penalties for the violation of certain provisions of this act.

History: 1956, Act 205, Eff. Aug. 11, 1956.

The People of the State of Michigan enact:

722.711 Definitions.

Sec. 1. As used in this act:

(a) "Child born out of wedlock" means a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage.

(b) "Child" means a child born out of wedlock.

(c) "Mother" means the mother of a child born out of wedlock.

(d) "Court" means the circuit court.

(e) "DNA identification profile" means the results of the DNA identification profiling of genetic testing material.

(f) "DNA identification profiling" means a validated scientific method of analyzing components of deoxyribonucleic acid molecules in a sample of genetic testing material to identify the pattern of the components' chemical structure that is unique to the individual.

(g) "State disbursement unit" or "SDU" means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.

(h) "Genetic testing material" means a sample of an individual's blood, saliva, or tissue collected from the individual that is used for genetic paternity testing conducted under this act.

(i) "Summary report" means a written summary of the DNA identification profile that includes only the following information:

(i) The court case number, if applicable, the laboratory case number or identification number, and the family independence agency case number.

(ii) The mother's name and race.

(iii) The child's name.

(iv) The alleged father's name and race.

(v) The collection dates and identification numbers of the genetic testing material.

(vi) The cumulative paternity index.

(vii) The probability of paternity.

(viii) The conclusion as to whether the alleged father can or cannot be excluded as the biological father.

(ix) The name, address, and telephone number of the contracting laboratory.

(x) The name of the individual certifying the report.

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1980, Act 54, Imd. Eff. Mar. 31, 1980;—Am. 1986, Act 107, Eff. June 1, 1986;—Am. 1998, Act 113, Eff. Aug. 10, 1998;—Am. 1999, Act 157, Imd. Eff. Nov. 3, 1999;—Am. 2000, Act 31, Imd. Eff. Mar. 15, 2000.

722.712 Child born out of wedlock; liability of parents.

Sec. 2. (1) The parents of a child born out of wedlock are liable for the necessary support and education of the child. They are also liable for the child's funeral expenses. Subject to subsections (2) and (3), based on each parent's ability to pay and on any other relevant factor, the court may apportion, in the same manner as medical expenses of the child are divided under the child support formula, the reasonable and necessary expenses of the mother's confinement and expenses in connection with her pregnancy between the parents and require the parent who did not pay the expense to pay his or her share of the expense to the other parent. At the request of a person other than a parent who has paid the expenses of the mother's confinement or expenses in connection with her pregnancy, the court may order a parent against whom the request is made to pay to the person other than a parent the parent's share of the expenses.

(2) If a pregnancy or a complication of a pregnancy has been determined in another proceeding to have been the result of either a physical or sexual battery by a party to the case, the court shall apportion these expenses to the party who was the perpetrator of the battery.

(3) If medicaid has paid the confinement and pregnancy expenses of a mother under this section, the court

shall not apportion confinement and pregnancy expenses to the mother. After the effective date of the amendatory act that added this subsection, based on the father's ability to pay and any other relevant factor, the court may apportion not more than 100% of the reasonable and necessary confinement and pregnancy costs to the father. If medicaid has not paid the confinement and pregnancy expenses of the mother under this section, the court shall require an itemized bill for the expenses upon request from the father before an apportionment is made.

(4) The court order shall provide that if the father marries the mother after the birth of the child and provides documentation of the marriage to the friend of the court, the father's obligation for payment of any remaining unpaid confinement and pregnancy expenses is abated subject to reinstatement after notice and hearing for good cause shown, including, but not limited to, dissolution of the marriage. The remaining unpaid amount of the confinement and pregnancy expenses owed by the father is abated as of the date that documentation of the marriage is provided to the friend of the court.

(5) Each confinement and pregnancy expenses order entered by the court on or before the effective date of the amendatory act that added this subsection shall be considered by operation of law to provide for the abatement of the remaining unpaid confinement and pregnancy expenses if the father marries the mother and shall be implemented under the same circumstances and enforced in the same manner as for the abatement of confinement and pregnancy expenses provided by subsection (4).

(6) The court shall admit in proceedings under this act a bill for funeral expenses, expenses of the mother's confinement, or expenses in connection with the mother's pregnancy, which bill constitutes prima facie evidence of the amount of those expenses, without third party foundation testimony.

(7) If the father dies, an order of filiation or a judicially approved settlement made before his death is enforceable against his estate in the same manner and way as a divorce decree.

(8) As used in this section, "medicaid" means the medical assistance program administered by the state under section 105 of the social welfare act, 1939 PA 280, MCL 400.105.

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1998, Act 113, Eff. Aug. 10, 1998;—Am. 2004, Act 204, Eff. Oct. 1, 2004;—Am. 2004, Act 253, Eff. Oct. 1, 2004.

722.713 Repealed. 1996, Act 308, Eff. June 1, 1997.

Compiler's note: The repealed section pertained to father's agreement for support and education.

722.714 Paternity proceeding; parties; venue; action not required; commencement of action; statute of limitations; initiating and conducting proceedings; utilization of child support formula; verification of complaint; charge; summons; default judgment; genetic paternity testing; next friend or guardian ad litem; rights of indigent defendant; order of filiation.

Sec. 4. (1) An action under this act shall be brought in the circuit court by the mother, the father, a child who became 18 years of age after August 15, 1984 and before June 2, 1986, or the family independence agency as provided in this act. The Michigan court rules for civil actions apply to all proceedings under this act. A complaint shall be filed in the county where the mother or child resides. If both the mother and child reside outside of this state, then the complaint shall be filed in the county where the putative father resides or is found. The fact that the child was conceived or born outside of this state is not a bar to entering a complaint against the putative father.

(2) An action to determine paternity shall not be brought under this act if the child's father acknowledges paternity under the acknowledgment of parentage act, or if the child's paternity is established under the law of another state.

(3) An action under this act may be commenced during the pregnancy of the child's mother or at any time before the child reaches 18 years of age. For a child who became 18 years of age after August 15, 1984 and before June 2, 1986, an action under this act may be commenced before January 1, 1995. This subsection applies regardless of whether the cause of action accrued before June 1, 1986 and regardless of whether the cause of action was barred under this subsection before June 1, 1986. A summons issued under this section shall be in the form the court determines and shall be served in the same manner as is provided by court rules for the service of process in civil actions.

(4) If the county family independence agency of the county in which the mother or alleged father resides first determines that she or he has physical possession of the child and is eligible for public assistance or without means to employ an attorney; if the family independence agency is the complainant; or if the mother, alleged father, or child is receiving services under part D of title IV of the social security act, 42 U.S.C. 651 to 667, then the prosecuting attorney or an attorney employed by the county under section 1 of 1941 PA 15, MCL 49.71, shall initiate and conduct proceedings under this act. The prosecuting attorney shall utilize the child support formula developed under section 19 of the friend of the court act, 1982 PA 294, MCL 552.519,

as a guideline in petitioning for child support. A complaint filed under this act shall be verified by oath or affirmation.

(5) The party filing the complaint shall name the person believed to be the father of the child and state in the complaint the time and place, as near as possible, when and where the mother became pregnant. If the family independence agency is the plaintiff, the required facts shall be stated upon information and belief.

(6) Upon the filing of a complaint, the court shall issue a summons against the named defendant. If the defendant does not file and serve a responsive pleading as required by the court rules, the court may enter a default judgment. Neither party is required to testify before entry of a default judgment in a proceeding under this act.

(7) If, after service of process, the parties fail to consent to an order naming the man as the child's father as provided in this act within the time permitted for a responsive pleading, then the family independence agency or its designee may file and serve both the mother and the alleged father with a notice requiring that the mother, alleged father, and child appear for genetic paternity testing as provided in section 6.

(8) If the mother, alleged father, or child does not appear for genetic paternity testing as provided in subsection (7), then the family independence agency or its designee may apply to the court for an order compelling genetic paternity tests as provided in section 6 or may seek other relief as permitted by statute or court rule.

(9) It is unnecessary in any proceedings under this act commenced by or against a minor to have a next friend or guardian ad litem appointed for the minor unless required by the circuit judge. A minor may prosecute or defend any proceedings in the same manner and with the same effect as if he or she were of legal age.

(10) If a child born out of wedlock is being supported in whole or in part by public assistance, including medical assistance, the family independence agency may file a complaint on behalf of the child in the circuit court in the county in which the child resides. The mother or alleged father of the child shall be made a party plaintiff and notified of the hearing on the complaint by summons. The complaint made by the family independence agency shall be verified by the director of the family independence agency, or his or her designated representative, or by the director of the county family independence agency of the county in which an action is brought, or the county director's designated representative.

(11) 1986 PA 107, which added this subsection, does not affect the rights of an indigent defendant in proceedings under this act as established by decisions of the courts of this state before June 1, 1986.

(12) If a determination of paternity is made under this act, the court may enter an order of filiation as provided in section 7. Regardless of who commences an action under this act, an order of filiation entered under this act has the same effect, is subject to the same provisions, and is enforced in the same manner as an order of filiation entered on complaint of the mother or father.

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1962, Act 238, Eff. Mar. 28, 1963;—Am. 1972, Act 98, Eff. Mar. 30, 1973;—Am. 1986, Act 107, Eff. June 1, 1986;—Am. 1992, Act 289, Eff. Jan. 1, 1993;—Am. 1994, Act 388, Imd. Eff. Dec. 29, 1994;—Am. 1996, Act 308, Eff. June 1, 1997;—Am. 1998, Act 113, Eff. Aug. 10, 1998.

722.714a Summons or notice; notification of obligation and rights; court order for genetic paternity testing.

Sec. 4a. (1) The summons or other initial notice to a party in an action under this act shall contain notification that the party's obligation to support the child will be determined and that the party's rights to custody of and parenting time with the child may be determined during the paternity action.

(2) The family independence agency or its designee that requires a party to appear for genetic paternity testing as provided in section 4, or the party requesting genetic paternity testing if a court orders genetic paternity testing for an individual as provided in section 4, shall serve notice of the testing on the mother and the alleged father. The notice shall include explanations of all of the following:

- (a) The test to be performed.
- (b) The purpose and potential uses of the test.
- (c) How the test results will be used to establish paternity or nonpaternity as provided in section 6.
- (d) How the individual will be provided with the test results.
- (e) The individual's right to keep the test results confidential as provided in section 6a.

History: Add. 1994, Act 388, Eff. Oct. 1, 1995;—Am. 1996, Act 18, Eff. June 1, 1996;—Am. 1998, Act 113, Eff. Aug. 10, 1998.

722.714b Effect of paternity in another state.

Sec. 4b. The establishment of paternity under the law of another state has the same effect and may be used for the same purposes as an acknowledgment of paternity or order of filiation under this act.

History: Add. 1994, Act 388, Imd. Eff. Dec. 29, 1994.

722.715 Mother and alleged father competent to testify; cross-examination; exclusion of public; continuance until birth of child.

Sec. 5. (1) Both the mother and the alleged father of the child shall be competent to testify, and if either gives evidence he or she shall be subject to cross-examination. The court may exclude the general public from the room where proceedings are held, pursuant to this act, admitting only persons directly interested in the case, including the officers of the court, officers or public welfare agents presenting the case, and witnesses.

(2) If the child is not born at the time set for trial, the case, unless the defendant mother or defendant father consents to trial, shall be continued until the child is born.

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1966, Act 146, Eff. Mar. 10, 1967;—Am. 1986, Act 107, Eff. June 1, 1986;—Am. 1989, Act 258, Imd. Eff. Dec. 26, 1989;—Am. 1998, Act 113, Eff. Aug. 10, 1998.

722.716 Pretrial proceedings; blood or tissue typing determinations as to mother, child, and alleged father; court order; refusal to submit to typing or identification profiling; qualifications of person conducting typing or identification profiling; compensation of expert; result of typing or identification profiling; filing summary report; objection; admissibility; presumption; burden of proof; summary disposition.

Sec. 6. (1) In a proceeding under this act before trial, the court, upon application made by or on behalf of either party, or on its own motion, shall order that the mother, child, and alleged father submit to blood or tissue typing determinations, which may include, but are not limited to, determinations of red cell antigens, red cell isoenzymes, human leukocyte antigens, serum proteins, or DNA identification profiling, to determine whether the alleged father is likely to be, or is not, the father of the child. If the court orders a blood or tissue typing or DNA identification profiling to be conducted and a party refuses to submit to the typing or DNA identification profiling, in addition to any other remedies available, the court may do either of the following:

(a) Enter a default judgment at the request of the appropriate party.

(b) If a trial is held, allow the disclosure of the fact of the refusal unless good cause is shown for not disclosing the fact of refusal.

(2) A blood or tissue typing or DNA identification profiling shall be conducted by a person accredited for paternity determinations by a nationally recognized scientific organization, including, but not limited to, the American association of blood banks.

(3) The court shall fix the compensation of an expert at a reasonable amount and may direct the compensation to be paid by the county or by any other party to the case, or by both in the proportions and at the times the court prescribes. Before blood or tissue typing or DNA identification profiling is conducted, the court may order a part or all of the compensation paid in advance. If the family independence agency paid for the genetic testing expenses, the court may order repayment by the alleged father if the court declares paternity. Documentation of the genetic testing expenses is admissible as evidence of the amount, which evidence constitutes prima facie evidence of the amount of those expenses without third party foundation testimony.

(4) Subject to subsection (5), the result of blood or tissue typing or a DNA identification profile and the summary report shall be served on the mother and alleged father. The summary report shall be filed with the court. Objection to the DNA identification profile or summary report is waived unless made in writing, setting forth the specific basis for the objection, within 14 calendar days after service on the mother and alleged father. The court shall not schedule a trial on the issue of paternity until after the expiration of the 14-day period. If an objection is not filed, the court shall admit in proceedings under this act the result of the blood or tissue typing or the DNA identification profile and the summary report without requiring foundation testimony or other proof of authenticity or accuracy. If an objection is filed within the 14-day period, on the motion of either party, the court shall hold a hearing to determine the admissibility of the DNA identification profile or summary report. The objecting party has the burden of proving by clear and convincing evidence by a qualified person described in subsection (2) that foundation testimony or other proof of authenticity or accuracy is necessary for admission of the DNA identification profile or summary report.

(5) If the probability of paternity determined by the qualified person described in subsection (2) conducting the blood or tissue typing or DNA identification profiling is 99% or higher, and the DNA identification profile and summary report are admissible as provided in subsection (4), paternity is presumed. If the results of the analysis of genetic testing material from 2 or more persons indicate a probability of paternity greater than 99%, the contracting laboratory shall conduct additional genetic paternity testing until all but 1 of the putative fathers is eliminated, unless the dispute involves 2 or more putative fathers who have identical DNA.

(6) Upon the establishment of the presumption of paternity as provided in subsection (5), either party may move for summary disposition under the court rules. This section does not abrogate the right of either party to

child support from the date of birth of the child if applicable under section 7.

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1982, Act 129, Imd. Eff. Apr. 20, 1982;—Am. 1989, Act 258, Imd. Eff. Dec. 26, 1989;—Am. 1990, Act 303, Imd. Eff. Dec. 14, 1990;—Am. 1994, Act 388, Imd. Eff. Dec. 29, 1994;—Am. 1996, Act 308, Eff. June 1, 1997;—Am. 1998, Act 113, Eff. Aug. 10, 1998;—Am. 2000, Act 31, Imd. Eff. Mar. 15, 2000.

722.716a Information obtained from genetic paternity testing; disclosure prohibited; retention and destruction of material; confidentiality; sale, transfer, or offer; audit; violation as misdemeanor; penalty.

Sec. 6a. (1) Except as authorized under this act, a person shall not disclose information obtained from genetic paternity testing that is authorized under this act.

(2) If an alleged father who is tested as part of an action under this act is found to be the child's father, the contracting laboratory shall retain the genetic testing material of the alleged father, mother, and child for no longer than the period of years prescribed by the national standards under which the laboratory is accredited. If a man is found not to be the child's father, the contracting laboratory shall destroy the man's genetic testing material after it is used in the paternity action, in compliance with section 13811 of the public health code, 1978 PA 368, MCL 333.13811, and in the presence of a witness. The witness may be an individual who is a party to the destruction of the genetic testing material. After the man's genetic testing material is destroyed, the contracting laboratory shall make and keep a written record of the destruction and have the individual who witnessed the destruction sign the record. The contracting laboratory shall also expunge the contracting laboratory's records regarding the genetic paternity testing performed on the genetic testing material in accordance with the national standards under which the laboratory is accredited. The contracting laboratory shall retain the genetic testing material of the mother and child for no longer than the period of years prescribed by the national standards under which the laboratory is accredited. After a contracting laboratory destroys an individual's genetic testing material as provided in this subsection, it shall notify the adult individual, or the parent or legal guardian of a minor individual, by certified mail that the genetic testing material was destroyed.

(3) A contracting laboratory, the family independence agency or its designee, or another entity involved with the genetic paternity testing are all required to protect the confidentiality of genetic testing material, except as required for a paternity determination under this act. The court, its officers, and the family independence agency shall not use or disclose genetic testing material for a purpose other than the paternity determination as authorized by this act.

(4) A person shall not sell, transfer, or offer genetic testing material obtained under this act except as authorized by this act.

(5) A contracting laboratory shall annually cause to be conducted an independent audit verifying the contracting laboratory's compliance with this section and section 6. The audit shall not disclose the names of, or otherwise identify, the test subjects required to submit to blood or tissue typing or DNA identification profiling under section 6 during the previous year. The contracting laboratory shall forward the audit to the department of consumer and industry services.

(6) A violation of this section is a misdemeanor punishable by a fine of not more than \$5,000.00. A second or subsequent violation of this section is a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$10,000.00, or both.

History: Add. 1998, Act 113, Eff. Aug. 10, 1998;—Am. 2000, Act 31, Imd. Eff. Mar. 15, 2000.

722.717 Order of filiation; circumstances; contents; support order; retroactivity; enforcement of judgment or order; fee; reports to director of department of community health; service of copies to parties.

Sec. 7. (1) The court shall enter an order of filiation declaring paternity and providing for the support of the child under 1 or more of the following circumstances:

(a) The finding of the court or the verdict determines that the man is the father.

(b) The defendant acknowledges paternity either orally to the court or by filing with the court a written acknowledgment of paternity.

(c) The defendant is served with summons and a default judgment is entered against him or her.

(2) An order of filiation entered under subsection (1) shall specify the sum to be paid weekly or otherwise, as prescribed in section 5 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605, until the child reaches the age of 18. Subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, the court may also order support for a child after he or she reaches 18 years of age. In addition to providing for the support of the child, the order shall also provide for the payment of the necessary expenses incurred by or for the mother in connection with her confinement and pregnancy and for

the funeral expenses if the child has died, as determined by the court under section 2. A child support obligation is only retroactive to the date that the paternity complaint was filed unless any of the following circumstances exist:

(a) The defendant was avoiding service of process.

(b) The defendant threatened or coerced through domestic violence or other means the complainant not to file a proceeding under this act.

(c) The defendant otherwise delayed the imposition of a support obligation.

(3) A judgment or order entered under this act providing for the support of a child or payment of expenses in connection with the mother's confinement or pregnancy is enforceable as provided in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650. If this act contains a specific provision regarding the contents or enforcement of a support order that conflicts with a provision in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650, this act controls in regard to that provision.

(4) Upon entry of an order of filiation, the clerk of the court shall collect a fee of \$35.00 from the person against whom the order of filiation is entered. The clerk shall retain \$9.00 of the fee and remit the \$26.00 balance, along with a written report of the order of filiation, to the director of the department of community health. The report shall be on a form prescribed by or in a manner approved by the director of the department of community health. Regardless of whether the fee required by this section is collected, the clerk shall transmit and the department of community health shall receive the report of the order of filiation.

(5) If an order of filiation or acknowledgment of parentage is abrogated by a later judgment or order of a court, the clerk of the court that entered the order shall immediately communicate that fact to the director of the department of community health on a form prescribed by the director of the department of community health. An order of filiation supersedes an acknowledgment of parentage.

(6) Within the time prescribed by court rule, the party, attorney, or agency that secures the signing of an order of filiation shall serve a copy of the order on all parties to the action and file proof of service with the court clerk.

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1962, Act 238, Eff. Mar. 28, 1963;—Am. 1986, Act 107, Eff. June 1, 1986;—Am. 1989, Act 277, Imd. Eff. Dec. 26, 1989;—Am. 1990, Act 244, Imd. Eff. Oct. 10, 1990;—Am. 1990, Act 294, Imd. Eff. Dec. 14, 1990;—Am. 1993, Act 146, Imd. Eff. Aug. 19, 1993;—Am. 1994, Act 388, Eff. Oct. 1, 1995;—Am. 1996, Act 18, Eff. June 1, 1996;—Am. 1996, Act 308, Eff. June 1, 1997;—Am. 2001, Act 109, Eff. Sept. 30, 2001;—Am. 2004, Act 209, Eff. Oct. 1, 2004.

722.717a Repealed. 2001, Act 109, Eff. Sept. 30, 2001.

Compiler's note: The repealed section pertained to support for child after child reaches 18 years of age.

722.717b Provisions for custody and parenting time; temporary order in case of dispute; referral to friend of the court; attorneys not required to represent parties in dispute.

Sec. 7b. If the court makes a determination of paternity and there is no dispute regarding custody, the court shall include in the order of filiation specific provisions for the custody and parenting time of the child as provided in the child custody act of 1970, Act No. 91 of the Public Acts of 1970, being sections 722.21 to 722.29 of the Michigan Compiled Laws. If there is a dispute between the parties concerning custody or parenting time, the court shall immediately enter an order that establishes support and temporarily establishes custody of and parenting time with the child. Pending a hearing on or other resolution of the dispute, the court may also refer the matter to the friend of the court for a report and recommendation as provided in section 5 of the friend of the court act, Act No. 294 of the Public Acts of 1982, being section 552.505 of the Michigan Compiled Laws. In a dispute regarding custody or parenting time, the prosecuting attorney, an attorney appointed by the county, or an attorney appointed by the court under section 4 shall not be required to represent either party regarding that dispute.

History: Add. 1994, Act 388, Eff. Oct. 1, 1995;—Am. 1996, Act 18, Eff. June 1, 1996;—Am. 1996, Act 308, Eff. June 1, 1997.

722.718 Payments to friend of court, clerk of court, or state disbursement unit; disbursement.

Sec. 8. The court shall require the payment of money to be made to the friend of the court, clerk of the court, or state disbursement unit, which money shall be disbursed in accordance with the order of the court, except that upon certification by a county family independence agency that a complainant is receiving public assistance, a payment received by the friend of the court for support and education of a child born out of wedlock shall be transmitted to the family independence agency.

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1971, Act 176, Imd. Eff. Dec. 2, 1971;—Am. 1999, Act 157, Imd. Eff. Nov. 3, 1999.

722.719 Bond to perform court order and indemnify county; filing; dismissal of complaint; default; issuance of citation to principal and sureties; service; execution; contempt of court; commitment; decree or judgment; appointment of receiver.

Sec. 9. (1) The person so adjudged to be the father of the child may be required to give bond with 1 or more sufficient sureties to the satisfaction of the court, to perform the order of the court, and to indemnify the county that is chargeable with the confinement expenses and with the maintenance of the child. The bond shall be filed with the friend of the court or the clerk of the court. If on the trial he is adjudged not to be the father of the child, the court shall dismiss the complaint; and the judgment of the court is final.

(2) If default is made in the payment of an installment or a part of the installment, mentioned in the bond filed under subsection (1), the judge of the court in which the bond is filed, at the request of the mother, guardian, or any other person interested in the support of the child, shall issue a citation to the principal and sureties in the bond requiring them to appear on a day specified in the citation, and show cause why execution shall not issue against them for the amount of the installment due and unpaid on the bond. The citation shall be served by the sheriff of any county in which the principal or sureties reside or may be found. If the amount due on the installment is not paid on or before the time mentioned for showing cause, the judge shall render judgment in favor of the complainant against the principal and sureties who have been served with the citation, for the amount unpaid on the installment due on the bond. Execution shall issue from the court against the goods and chattels of the person or persons against whom the judgment is rendered for the amount of the judgment and costs to the sheriff of any county in the state where a party to the judgment resides or has property subject to the execution.

(3) The judge, in case of default in the payment, when due, of any installment or any part of the installment or in the condition of the bond, may adjudge the reputed father guilty of contempt of court as provided in sections 31 to 39 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.631 to 552.639. The commitment of the reputed father under sections 31 to 39 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.631 to 552.639, does not operate to stay or defeat the obtaining of judgment and the collection of the judgment by execution. The rendition and the enforcement of decree or judgment does not bar or hinder the taking of similar proceedings for subsequent defaults.

(4) In order to make effective the purpose and intention of the bonds required under subsection (1), the court may appoint a receiver of the real and personal property belonging to the judgment debtors with powers not exceeding those customarily exercised by receivers.

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1982, Act 296, Eff. July 1, 1983;—Am. 1996, Act 18, Eff. June 1, 1996;—Am. 1998, Act 113, Eff. Aug. 10, 1998.

722.720 Continuing jurisdiction; purposes.

Sec. 10. The court has continuing jurisdiction over proceedings brought under this act to increase or decrease the amount fixed by the order of filiation subject to section 7, and to provide for, change, and enforce provisions of the order relating to the custody or support of or parenting time with the child.

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1986, Act 107, Eff. June 1, 1986;—Am. 1990, Act 244, Imd. Eff. Oct. 10, 1990;—Am. 1990, Act 294, Imd. Eff. Dec. 14, 1990;—Am. 1994, Act 388, Imd. Eff. Dec. 29, 1994;—Am. 1996, Act 18, Eff. June 1, 1996;—Am. 2001, Act 109, Eff. Sept. 30, 2001.

722.720a Repealed. 1982, Act 296, Eff. July 1, 1983.

Compiler's note: The repealed section pertained to review of orders of filiation.

722.721 Mother's support and education of child born out of wedlock; bond; default; liability of father.

Sec. 11. (1) If a mother of a child born out of wedlock possesses property and fails to support and educate her child, the court having jurisdiction, on application of the child's guardian or next friend, or the family independence agency if the child is being supported in whole or in part by public assistance, may investigate the matter and, after a hearing and subject to section 7, may make an order charging the mother with the payment of money weekly or otherwise for the child's support and education.

(2) The court may require the mother to give security, by bond, with sufficient sureties approved by the court for the payment as directed by the order. In case of default under the bond, the bond shall be enforced in the manner provided in section 9.

(3) This section does not relieve the father from liability for the child's support and education in accordance with this act.

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1972, Act 98, Eff. Mar. 30, 1973;—Am. 1990, Act 244, Imd. Eff. Oct. 10, 1990;

—Am. 2001, Act 109, Eff. Sept. 30, 2001.

722.722 False complaint; penalty.

Sec. 12. Any person making a false complaint under this act as to identity of the father, or the aiding or abetting therein, shall be guilty of a misdemeanor. This section shall not apply to an authorized official of the department of social services who in good faith filed a complaint under this act based upon information and belief.

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1972, Act 98, Eff. Mar. 30, 1973.

722.723 Repealed. 1982, Act 296, Eff. July 1, 1983.

Compiler's note: The repealed section pertained to civil jurisdiction.

722.724 Appeal; stay of execution, bond, security for costs.

Sec. 14. An appeal in all cases may be taken by either the complainant or the defendant, a guardian ad litem appointed by the court for the child, the mother or her personal representative, from any final order or judgment of any court having jurisdiction of filiation proceedings.

No appeal, however, shall operate as a stay of execution unless the defendant gives the security provided in section 9 of this act and further security to pay the costs of such appeal.

History: 1956, Act 205, Eff. Aug. 11, 1956.

722.725 Reference to mother as parent of child in records, certificates, or other papers.

Sec. 15. In a record, certificate, or other paper made or executed requiring a declaration by or notice to the mother of a child born out of wedlock or otherwise requiring a reference to the relation of a mother to such a child, it shall be sufficient to refer to the mother as the parent of the child. An explicit reference shall not be made to illegitimacy.

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1980, Act 20, Imd. Eff. Mar. 7, 1980.

722.726 Application of act.

Sec. 16. This act applies to all cases arising out of birth out of wedlock commenced after this act takes effect, and such cases shall not thereafter be commenced under chapter 42 of the Revised Statutes of 1846, as amended, being sections 722.601 to 722.612, inclusive, of the Compiled Laws of 1948, which shall, however, apply to and govern all cases commenced thereunder prior to the time this act takes effect.

History: 1956, Act 205, Eff. Aug. 11, 1956.

722.727 Fees; assessment in order of filiation.

Sec. 17. No fees for commencement of suit, filing fee, decree or judgment fee, or stenographer fee shall be required in proceedings under this act, but the court may assess such fees against the father in the order of filiation.

History: 1956, Act 205, Eff. Aug. 11, 1956.

722.728 Enforcement remedies.

Sec. 18. In addition to the methods provided under this act for the enforcement of any court order or judgment, whether interlocutory or final, any such order, decree or judgment may be also enforced under the provisions of Act No. 8 of the Public Acts of 1952, as amended, being sections 780.151 to 780.173, inclusive, of the Compiled Laws of 1948.

History: 1956, Act 205, Eff. Aug. 11, 1956.

722.729 Reimbursement of county for cost of enforcing support or parenting time orders; service fee; computation, payment, and disposition; failure or refusal to pay service fee; contempt.

Sec. 19. (1) To reimburse the county for the cost of enforcing support or parenting time orders under this act, the court shall order the payment of \$2.00 per month, payable semiannually on each January 2 and July 2, to the friend of the court or state disbursement unit. The service fee shall be paid by the person ordered to pay the support money. The service fee shall be computed from the beginning date of the support order and shall continue while the support order is operative. The service fee shall be paid 6 months in advance on each due date, except for the first payment, which shall be paid at the same time the support order is filed and covers the period of time from that month until the next calendar due date. An order or judgment for the payment of support money shall provide for the payment of the service fee. Upon its own motion, the court may amend an order or judgment for the payment of support money to provide for the payment of the service fee in the

amount provided by this subsection, upon proper notice to the person ordered to pay the support money. The service fees shall be turned over to the county treasurer and credited to the general fund of the county.

(2) The court may hold in contempt a person who fails or refuses to pay a service fee ordered under subsection (1).

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1959, Act 107, Eff. Mar. 19, 1960;—Am. 1967, Act 74, Eff. Jan. 1, 1968;—Am. 1983, Act 194, Imd. Eff. Nov. 1, 1983;—Am. 1999, Act 157, Imd. Eff. Nov. 3, 1999.

722.729a Transition to centralized receipt and disbursement of support and fees.

Sec. 19a. The department, the SDU, and each office of the friend of the court shall cooperate in the transition to the centralized receipt and disbursement of support and fees. An office of the friend of the court shall continue to receive and disburse support and fees through the transition, based on the schedule developed as required by section 6 of the office of child support act, 1971 PA 174, MCL 400.236, and modifications to that schedule as the department considers necessary.

History: Add. 1999, Act 157, Imd. Eff. Nov. 3, 1999.

722.730 Paternity act; short title.

Sec. 20. This act shall be known and may be cited as “The paternity act”.

History: 1956, Act 205, Eff. Aug. 11, 1956.

CURFEW FOR CHILDREN
Act 41 of 1960

AN ACT to regulate the hours that children under the age of 16 years may be in or on the public streets, highways, alleys and parks; and to prescribe penalties for violations of the provisions of this act.

History: 1960, Act 41, Eff. Aug. 17, 1960.

The People of the State of Michigan enact:

722.751 Curfew for children under 12 years old.

Sec. 1. No minor under the age of 12 years shall loiter, idle or congregate in or on any public street, highway, alley or park between the hours of 10 o'clock p.m. and 6 o'clock a.m., unless the minor is accompanied by a parent or guardian, or some adult delegated by the parent or guardian to accompany the child.

History: 1960, Act 41, Eff. Aug. 17, 1960.

722.752 Curfew for minors under age 16.

Sec. 2. A minor under the age of 16 years shall not loiter, idle or congregate in or on any public street, highway, alley or park between the hours of 12 midnight and 6 a.m., immediately following, except where the minor is accompanied by a parent or guardian, or an adult delegated by the parent or guardian to accompany the minor, or where the minor is upon an errand or other legitimate business directed by his parent or guardian.

History: 1960, Act 41, Eff. Aug. 17, 1960;—Am. 1972, Act 20, Imd. Eff. Feb. 19, 1972.

722.753 Aiding underage children to violate law; misdemeanor.

Sec. 3. Any person of the age of 16 years or over assisting, aiding, abetting, allowing, permitting or encouraging any minor under the age of 16 years to violate the provisions of sections 1 and 2 hereof is guilty of a misdemeanor.

History: 1960, Act 41, Eff. Aug. 17, 1960.

722.754 Local regulation as to curfew.

Sec. 4. Nothing in this act shall be deemed to limit any powers now or hereafter possessed by law by any township, charter township, city or village to regulate by ordinance a curfew of minors.

History: 1960, Act 41, Eff. Aug. 17, 1960.

COUNTY REHABILITATION WORK CAMPS FOR JUVENILE OFFENDERS
Act 71 of 1965

AN ACT authorizing the establishment of county rehabilitation work camps for the custody of juvenile offenders and the powers and duties of the board of supervisors.

History: 1965, Act 71, Eff. Mar. 31, 1966.

The People of the State of Michigan enact:

722.761 County rehabilitation work camps; operation by board of supervisors.

Sec. 1. The board of supervisors of any county may construct, maintain, equip, furnish, appoint the necessary personnel and supervise the operation of county rehabilitation work camps for the purpose of rehabilitating juvenile offenders. County rehabilitation work camps established under this law must meet licensing standards as established by the state department of social welfare.

History: 1965, Act 71, Eff. Mar. 31, 1966.

722.762 Agreements with county maintaining work camps.

Sec. 2. The board of supervisors of any county not having a county rehabilitation work camp or the legislative body of any municipality either within or without the county maintaining a county rehabilitation work camp may enter into agreements with a county maintaining such camps.

History: 1965, Act 71, Eff. Mar. 31, 1966.

CHILD IDENTIFICATION AND PROTECTION ACT

Act 176 of 1985

AN ACT to safeguard the privacy of children by regulating the fingerprinting of children.

History: 1985, Act 176, Imd. Eff. Dec. 2, 1985.

The People of the State of Michigan enact:

722.771 Short title.

Sec. 1. This act shall be known and may be cited as the “child identification and protection act”.

History: 1985, Act 176, Imd. Eff. Dec. 2, 1985.

722.772 Definitions.

Sec. 2. As used in this act:

(a) “Child” means any person under 17 years of age.

(b) “Governmental unit” means the state or any political subdivision of the state, an authorized representative of the state or any political subdivision of the state, any school district, intermediate school district, or an authorized representative of any school district or intermediate school district.

History: 1985, Act 176, Imd. Eff. Dec. 2, 1985.

722.773 Fingerprinting child; prohibition; exception.

Sec. 3. Except as provided in section 4, a governmental unit shall not fingerprint a child.

History: 1985, Act 176, Imd. Eff. Dec. 2, 1985.

722.774 Fingerprinting child; conditions.

Sec. 4. A governmental unit may fingerprint a child if 1 or more of the following apply:

(a) A parent or guardian has given written authorization for the taking of the fingerprints for use in the future in case the child becomes a runaway or a missing child. Only 1 set of prints shall be taken and the fingerprint cards shall be given to the parent or guardian for safekeeping. The fingerprints, written authorizations for fingerprinting, or notice of their existence shall not be recorded, stored, or kept in any manner by a police agency, except as provided in this subdivision or except at the request of the parent or guardian if the child becomes a runaway or a missing child. When the child is located or the case is otherwise disposed of, the fingerprint cards shall be returned to the parents or guardian.

(b) Fingerprints are required to be taken pursuant to section 3 of Act No. 289 of the Public Acts of 1925, being section 28.243 of the Michigan Compiled Laws, section 1 of Act No. 120 of the Public Acts of 1935, being section 28.271 of the Michigan Compiled Laws, or section 724 of Act No. 258 of the Public Acts of 1974, being section 330.1724 of the Michigan Compiled Laws.

(c) Fingerprints are required by court order.

(d) Fingerprints are voluntarily given with the written permission of the child and parent or guardian, upon request of a law enforcement officer, to aid in a specific criminal investigation. Only 1 set of prints shall be taken and, upon completion of the investigation, the law enforcement agency shall return the fingerprint cards to the parent or guardian of the child.

History: 1985, Act 176, Imd. Eff. Dec. 2, 1985.

722.775 Conditional effective date.

Sec. 5. This act shall not take effect unless House Bill No. 4228 of the 83rd Legislature is enacted into law.

History: 1985, Act 176, Imd. Eff. Dec. 2, 1985.

Compiler's note: House Bill No. 4228, referred to in this section, became P.A. 1985, No. 175, Imd. Eff. Dec. 2, 1985.

JUVENILE JUSTICE SERVICES ACT

Act 280 of 1975

722.801-722.819 Repealed. 1977, Act 296, Eff. Dec. 31, 1977;—1978, Act 87, Eff. Apr. 1, 1978.

Compiler's note: Several of the repealed sections had already expired on March 31, 1978, pursuant to the terms of former MCL 722.819.

JUVENILE DIVERSION ACT

Act 13 of 1988

AN ACT to permit certain minors to be diverted from the court system having jurisdiction over minors; to establish diversion criteria and procedures; to require certain records to be made and kept; to prescribe certain powers and duties of courts having jurisdiction over minors and of law enforcement agencies; and to prescribe certain penalties.

History: 1988, Act 13, Eff. Apr. 1, 1988;—Am. 1996, Act 415, Eff. Jan. 1, 1998.

The People of the State of Michigan enact:

722.821 Short title.

Sec. 1. This act shall be known and may be cited as the “juvenile diversion act”.

History: 1988, Act 13, Eff. Apr. 1, 1988.

722.822 Definitions.

Sec. 2. As used in this act:

(a) “Assaultive crime” means an offense that, if committed by an adult, would constitute an offense against a person described in section 82, 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d, 520e, 520g, 529, 529a, or 530 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.82, 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b, 750.520c, 750.520d, 750.520e, 750.520g, 750.529, 750.529a, and 750.530 of the Michigan Compiled Laws.

(b) “Court” means the family division of circuit court.

(c) “Divert” or “diversion” means the placement that occurs when a formally recorded apprehension is made by a law enforcement agency for an act by a minor that if a petition were filed with the court would bring that minor within section 2(a) of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.2 of the Michigan Compiled Laws, and instead of petitioning the court or authorizing a petition, either of the following occurs:

(i) The minor is released into the custody of his or her parent, guardian, or custodian and the investigation is discontinued.

(ii) The minor and the minor's parent, guardian, or custodian agree to work with a person or public or private organization or agency that will assist the minor and the minor's family in resolving the problem that initiated the investigation.

(d) “Law enforcement agency” means a police department of a city, village, or township, a sheriff's department, the department of state police, or any other governmental law enforcement agency in this state.

(e) “Minor” means an individual less than 17 years of age.

History: 1988, Act 13, Eff. Apr. 1, 1988;—Am. 1994, Act 197, Eff. Oct. 1, 1994;—Am. 1996, Act 415, Eff. Jan. 1, 1998.

722.823 Powers of law enforcement official or court intake worker where petition not filed or authorized; diversion of minor.

Sec. 3. (1) If in the course of investigating an alleged offense by a minor a petition has not been filed with the court, or if a petition has not been authorized, a law enforcement official or court intake worker may do 1 of the following:

(a) Release the minor into the custody of his or her parent, guardian, or custodian and discontinue the investigation.

(b) Divert the matter by making an agreement pursuant to section 5 with the minor and the minor's parent, guardian, or custodian to refer the minor to a person or public or private organization or agency that will assist the minor and the minor's family in resolving the problem that initiated the investigation.

(c) File a petition with the court or authorize a petition that has been filed.

(2) A minor may be diverted only as provided in subsection (1)(a) or (b) and subsection (3).

(3) A minor accused or charged with an assaultive offense shall not be diverted.

History: 1988, Act 13, Eff. Apr. 1, 1988.

722.824 Decision to divert minor; factors to be examined.

Sec. 4. Before a decision is made to divert a minor, all of the following factors shall be examined:

(a) The nature of the alleged offense.

(b) The minor's age.

- (c) The nature of the problem that led to the alleged offense.
- (d) The minor's character and conduct.
- (e) The minor's behavior in school, family, and group settings.
- (f) Any prior diversion decisions made concerning the minor and the nature of the minor's compliance with the diversion agreement.

History: 1988, Act 13, Eff. Apr. 1, 1988.

722.825 Conference; notice; time; prohibitions; diversion agreement; filing petition; noncompliance with terms of agreement or plan.

Sec. 5. (1) If a decision is made to divert a minor with a referral under section 3(1)(b), a conference with the minor and the minor's parent, guardian, or custodian shall be held to consider alternatives to the filing of a petition with the court or to the authorization of a petition. The law enforcement official or intake worker shall notify the minor and the minor's parent, guardian, or custodian of the proposed conference and shall inform the minor, and the minor's parent, guardian, or custodian of all of the following:

- (a) That participation in the conference or resulting referral plan is voluntary.
- (b) That an attorney may accompany the minor and the minor's parent, guardian, or custodian at the conference.
- (c) The alternative referral programs available and the criteria utilized to determine whether to file a petition with the court or to dispose of the petition with a referral.
- (d) That if diversion is agreed to and the minor complies with the terms of the diversion agreement and the referral plan, a petition cannot be filed with the court, or if a petition has been filed, the petition cannot be authorized.

(2) The conference to consider alternatives to the filing of a petition with the court or to consider alternatives to the authorization of a petition shall not be held until after the questioning, if any, of the minor has been completed or after an investigation has been made concerning the alleged offense. Mention of, or promises concerning, diversion shall not be made by a law enforcement official or court intake worker in the presence of the minor or the minor's parent, guardian, or custodian during any questioning of the minor. Information divulged by the minor during the conference or after the diversion is agreed to, but before a petition is filed with the court or has been authorized, shall not be used against the minor.

(3) If a conference held under this section results in diversion that imposes conditions on the minor and that will prevent the filing of a petition with the court or the authorization of a petition, the terms of the diversion agreement shall be set forth in writing, dated, and signed by the law enforcement official or court intake worker, the minor, and the minor's parent, guardian, or custodian.

(4) If a conference is held under this section and an agreement under subsection (3) is not reached, a petition may be filed with the court as provided by law and a petition may be authorized as provided by law. If an agreement under subsection (3) is not reached and a petition is to be filed, the petition shall be filed with the court not later than 30 days after the conference.

(5) If the minor fails to comply with the terms of the diversion agreement and the referral plan, the law enforcement official or the court intake worker may revoke the diversion agreement. If the diversion agreement is revoked, a petition may be filed with the court as provided by law and a petition may be authorized as provided by law.

History: 1988, Act 13, Eff. Apr. 1, 1988;—Am. 1996, Act 137, Eff. May 1, 1996.

722.826 Decision to divert minor; information to be filed; revocation.

Sec. 6. (1) When a decision is made to divert a minor, the law enforcement official or court intake worker shall file with the court in the county in which the minor resides or is found all of the following information:

- (a) The minor's name, address, and date of birth.
- (b) The act or offense for which the minor was apprehended.
- (c) The date and place of the act or offense for which the minor was apprehended.
- (d) The diversion decision made, whether referred or released.
- (e) The nature of the minor's compliance with the diversion agreement.

(2) If a diversion agreement is revoked pursuant to section 5(5), the law enforcement official or court intake worker shall file with the court in which the information described in subsection (1) is filed the fact of and reasons for the revocation.

History: 1988, Act 13, Eff. Apr. 1, 1988;—Am. 1996, Act 137, Eff. May 1, 1996.

722.827 Separate diversion record.

Sec. 7. The court in the county in which a diverted minor resides or is found shall keep a separate diversion

record for that minor.

History: 1988, Act 13, Eff. Apr. 1, 1988.

722.828 Opening record; destruction of record.

Sec. 8. (1) Except as otherwise required in subsection (2), a record required to be kept under this act shall be open only by order of the court to persons having a legitimate interest.

(2) A record required to be kept under this act shall be open to a law enforcement agency or court intake worker for only the purpose of deciding whether to divert a minor.

(3) A minor's record kept under this act shall be destroyed within 28 days after the minor becomes 17 years of age.

History: 1988, Act 13, Eff. Apr. 1, 1988.

722.829 Use of record; violation as misdemeanor; penalty.

Sec. 9. (1) A record kept under this act shall not be used by any person, including a court official or law enforcement official, for any purpose except in making a decision on whether to divert a minor.

(2) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 180 days, or a fine of not more than \$1,000.00, or both.

History: 1988, Act 13, Eff. Apr. 1, 1988.

722.830 Conditional effective date.

Sec. 10. This act shall not take effect unless Senate Bill No. 602 of the 84th Legislature is enacted into law.

History: 1988, Act 13, Eff. Apr. 1, 1988.

722.831 Effective date.

Sec. 11. This act shall take effect April 1, 1988.

History: 1988, Act 13, Eff. Apr. 1, 1988.

SURROGATE PARENTING ACT

Act 199 of 1988

AN ACT to establish surrogate parentage contracts as contrary to public policy and void; to prohibit surrogate parentage contracts for compensation; to provide for children conceived, gestated, and born pursuant to a surrogate parentage contract; and to provide for penalties and remedies.

History: 1988, Act 199, Eff. Sept. 1, 1988.

The People of the State of Michigan enact:

722.851 Short title.

Sec. 1. This act shall be known and may be cited as the “surrogate parenting act”.

History: 1988, Act 199, Eff. Sept. 1, 1988.

722.853 Definitions.

Sec. 3. As used in this act:

(a) “Compensation” means a payment of money, objects, services, or anything else having monetary value except payment of expenses incurred as a result of the pregnancy and the actual medical expenses of a surrogate mother or surrogate carrier.

(b) “Developmental disability” means that term as defined in the mental health code, Act No. 258 of the Public Acts of 1974, being sections 330.1001 to 330.2106 of the Michigan Compiled Laws.

(c) “Mental illness” means that term as defined in the mental health code, Act No. 258 of the Public Acts of 1974.

(d) “Mentally retarded” means that term as defined in the mental health code, Act No. 258 of the Public Acts of 1974.

(e) “Participating party” means a biological mother, biological father, surrogate carrier, or the spouse of a biological mother, biological father, or surrogate carrier, if any.

(f) “Surrogate carrier” means the female in whom an embryo is implanted in a surrogate gestation procedure.

(g) “Surrogate gestation” means the implantation in a female of an embryo not genetically related to that female and subsequent gestation of a child by that female.

(h) “Surrogate mother” means a female who is naturally or artificially inseminated and who subsequently gestates a child conceived through the insemination pursuant to a surrogate parentage contract.

(i) “Surrogate parentage contract” means a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination, or in which a female agrees to surrogate gestation, and to voluntarily relinquish her parental or custodial rights to the child. It is presumed that a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination by a person other than her husband, or in which a female agrees to surrogate gestation, includes a provision, whether or not express, that the female will relinquish her parental or custodial rights to the child.

History: 1988, Act 199, Eff. Sept. 1, 1988;—Am. 1990, Act 190, Imd. Eff. July 24, 1990.

722.855 Surrogate parentage contract as void and unenforceable.

Sec. 5. A surrogate parentage contract is void and unenforceable as contrary to public policy.

History: 1988, Act 199, Eff. Sept. 1, 1988.

722.857 Surrogate parentage contract prohibited; surrogate parentage contract as felony; penalty.

Sec. 7. (1) A person shall not enter into, induce, arrange, procure, or otherwise assist in the formation of a surrogate parentage contract under which an unemancipated minor female or a female diagnosed as being mentally retarded or as having a mental illness or developmental disability is the surrogate mother or surrogate carrier.

(2) A person other than an unemancipated minor female or a female diagnosed as being mentally retarded or as having a mental illness or developmental disability who enters into, induces, arranges, procures, or otherwise assists in the formation of a contract described in subsection (1) is guilty of a felony punishable by a fine of not more than \$50,000.00 or imprisonment for not more than 5 years, or both.

History: 1988, Act 199, Eff. Sept. 1, 1988.

722.859 Surrogate parentage contract for compensation prohibited; surrogate parentage

contract for compensation as misdemeanor or felony; penalty.

Sec. 9. (1) A person shall not enter into, induce, arrange, procure, or otherwise assist in the formation of a surrogate parentage contract for compensation.

(2) A participating party other than an unemancipated minor female or a female diagnosed as being mentally retarded or as having a mental illness or developmental disability who knowingly enters into a surrogate parentage contract for compensation is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00 or imprisonment for not more than 1 year, or both.

(3) A person other than a participating party who induces, arranges, procures, or otherwise assists in the formation of a surrogate parentage contract for compensation is guilty of a felony punishable by a fine of not more than \$50,000.00 or imprisonment for not more than 5 years, or both.

History: 1988, Act 199, Eff. Sept. 1, 1988.

722.861 Custody of child.

Sec. 11. If a child is born to a surrogate mother or surrogate carrier pursuant to a surrogate parentage contract, and there is a dispute between the parties concerning custody of the child, the party having physical custody of the child may retain physical custody of the child until the circuit court orders otherwise. The circuit court shall award legal custody of the child based on a determination of the best interests of the child. As used in this section, "best interests of the child" means that term as defined in section 3 of the child custody act of 1970, Act No. 91 of the Public Acts of 1970, being section 722.23 of the Michigan Compiled Laws.

History: 1988, Act 199, Eff. Sept. 1, 1988.

722.863 Effective date.

Sec. 13. This act shall take effect September 1, 1988.

History: 1988, Act 199, Eff. Sept. 1, 1988.

SUBSIDIZED GUARDIANSHIP ASSISTANCE ACT

Act 260 of 2008

AN ACT to provide for subsidy payments to certain guardians of minors; and to provide for duties and responsibilities of certain state departments and agencies.

History: 2008, Act 260, Imd. Eff. Aug. 4, 2008.

The People of the State of Michigan enact:

722.871 Short title.

Sec. 1. This act shall be known and may be cited as the "subsidized guardianship assistance act".

History: 2008, Act 260, Imd. Eff. Aug. 4, 2008.

722.872 Definitions.

Sec. 2. As used in this act:

- (a) "Child" means a person less than 18 years of age.
- (b) "Department" means the department of human services.
- (c) "Eligible child" means a child who meets the eligibility criteria set forth in section 3 for receiving subsidized guardianship assistance.
- (d) "Guardian" means a person appointed by the court to act as a legal guardian for a child pursuant to section 19a or 19c of chapter XIIA of the probate code, MCL 712A.19a and 712A.19c.
- (e) "Legal custodian" means an individual who is at least 18 years of age in whose care a child remains or is placed after a court makes a finding under section 13a of chapter XIIA of the probate code, MCL 712A.13a.
- (f) "Probate code" means the probate code of 1939, 1939 PA 288, MCL 710.21 to 712A.32.
- (g) "Relative" means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, or the spouse of any of the above, even after the marriage has ended by death or divorce. The parent of a man who the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child may be considered a relative under this act but this is not to be considered as a finding of paternity and does not confer legal standing on the putative father.
- (h) "Subsidized guardianship assistance agreement" means an agreement regarding financial support for children who meet the qualifications for subsidized guardianship assistance as specified in this act or in the department's administrative rules.
- (i) "Title IV-E" refers to the federal assistance provided through the United States department of health and human services to reimburse states for foster care and adoption assistance payments.

History: 2008, Act 260, Imd. Eff. Aug. 4, 2008.

722.873 Subsidized guardianship assistance; eligibility.

Sec. 3. A child is eligible to receive subsidized guardianship assistance if he or she is a ward of the court under section 2(b) of chapter XIIA of the probate code, MCL 712A.2, or is under the Michigan children's institute jurisdiction, control, or supervision, and both of the following apply:

- (a) A specific factor or condition, or a combination of factors and conditions, exists with respect to the child so that it is reasonable to conclude that the child cannot be placed with a guardian without providing subsidy payments under this act. The factors or conditions to be considered may include ethnic or family background, age, membership in a minority or sibling group, medical condition, physical, mental, or emotional disability, or length of time the child has been waiting for a permanent home.
- (b) A reasonable but unsuccessful effort was made to place the child with an appropriate guardian without providing subsidy assistance under this act or a prospective placement is the only placement in the best interest of the child.

History: 2008, Act 260, Imd. Eff. Aug. 4, 2008.

722.874 Subsidized guardianship assistance; payment to eligible guardian; criteria.

Sec. 4. A guardian who meets all of the following criteria may receive subsidized guardianship assistance on behalf of an eligible child:

- (a) The guardian is the eligible child's relative or legal custodian.
- (b) The guardian is assessed and approved for subsidized guardianship assistance by the department.

(c) The eligible child resides with the guardian in the guardian's residence.

History: 2008, Act 260, Imd. Eff. Aug. 4, 2008.

722.875 Subsidized guardianship assistance; payment to eligible guardian; determination.

Sec. 5. (1) Subject to the provisions of this act, the department may pay subsidized guardianship assistance to an eligible guardian on behalf of an eligible child.

(2) The guardian shall apply for subsidized guardianship assistance under this act to the department.

(3) The department shall review the eligibility of the guardian and child for continuation of subsidized guardianship assistance annually. The guardian shall provide the eligibility information requested by the department or the court for purposes of the annual review.

(4) The department shall make a determination within 30 days after receipt of a request for subsidized guardianship assistance.

History: 2008, Act 260, Imd. Eff. Aug. 4, 2008.

722.876 Subsidized guardianship assistance; prohibition; conditions; notice of termination.

Sec. 6. (1) The department shall not provide subsidized guardianship assistance after 1 of the following occurs:

(a) The child reaches 18 years of age or 19 years of age if he or she is still attending high school.

(b) The child is incarcerated in an adult correctional facility under a sentence and commitment order of a court of competent jurisdiction.

(c) The child is placed in a child caring institution as that term is defined in section 1 of 1973 PA 116, MCL 722.111, for a period of at least 90 days.

(d) The child is removed from the guardian's residence by court order.

(e) The death of the child.

(f) The child is adopted by the guardian or another individual under the Michigan adoption code, chapter X of the probate code, MCL 710.21 to 710.70, or the adoption laws of any other state or country.

(g) The guardianship is terminated by order of the court having jurisdiction in the guardianship proceeding.

(h) The child no longer resides in the guardian's residence.

(i) The guardian fails to submit to the department information required or requested by the department for the annual review required under section 5.

(j) The guardian no longer satisfies 1 or more of the criteria specified in section 4.

(k) The guardian has failed to comply with section 7.

(l) Upon the death of the guardian, if no new guardian is appointed by the court within 30 days after that death.

(m) The department determines that funds are no longer available to support continuation of subsidized guardianship assistance.

(2) The department shall send notice of termination of subsidized guardianship assistance under this section by mail to the guardian at the guardian's current or last known address and to the court with jurisdiction over the guardianship case. Notice mailed under this subsection shall include a statement of the department's reason for termination.

History: 2008, Act 260, Imd. Eff. Aug. 4, 2008.

722.877 Public or private medical insurance or assistance; application and maintenance.

Sec. 7. The guardian shall apply for and maintain on behalf of the child any public or private medical insurance or assistance for which the child is eligible, including eligibility under applicable laws providing financial assistance for medical or health care expenses.

History: 2008, Act 260, Imd. Eff. Aug. 4, 2008.

722.878 Collecting, assembling, and reporting data and information.

Sec. 8. (1) The department is responsible for collecting, assembling, and reporting all data and information required for reporting purposes.

(2) The guardian shall cooperate with the department and provide all information that the guardian possesses as requested by the department to facilitate compliance with this section.

History: 2008, Act 260, Imd. Eff. Aug. 4, 2008.

722.879 Appeal of decision.

Sec. 9. An applicant for subsidized guardianship assistance under this act or a guardian or child who has received subsidized guardianship assistance under a subsidized guardianship assistance agreement may appeal a decision of the department denying the application, establishing or modifying the subsidized guardianship

assistance, or terminating subsidized guardianship assistance according to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2008, Act 260, Imd. Eff. Aug. 4, 2008.

722.880 Federal laws and regulations.

Sec. 10. If title IV-E eligibility is approved as a funding source for subsidized guardianship assistance, the department is subject to all federal laws and regulation requirements, including cooperation with the title IV-B program and assignment of child support.

History: 2008, Act 260, Imd. Eff. Aug. 4, 2008.

722.881 Postpermanency services; eligibility.

Sec. 11. Families are eligible for postpermanency services in the same manner as adoptive families.

History: 2008, Act 260, Imd. Eff. Aug. 4, 2008.

THE PARENTAL RIGHTS RESTORATION ACT

Act 211 of 1990

An initiation of Legislation to require parental consent for abortions performed on unemancipated minors and to provide a judicial alternative to parental consent; to provide for certain rights, powers, and duties of departments, individuals, and courts; and to prescribe penalties.

History: 1990, Act 211, Eff. Mar. 28, 1991;—Am. 1991, Act 80, Imd. Eff. July 18, 1991.

Compiler's note: This new act was proposed by initiative petition pursuant to Const 1963, art 2, § 9. On September 12, 1990, the initiative petition was approved by an affirmative vote of the majority of the Senators elect and filed with the Secretary of State. On September 12, 1990, the initiative petition was approved by an affirmative vote of the majority of the Members elect of the House of Representatives and filed with the Secretary of State. The Legislature did not vote pursuant to Const 1963, art 4, § 27, to give immediate effect to this enactment.

The People of the State of Michigan enact:

722.901 Short title.

Section 1. This act shall be known and may be cited as “the parental rights restoration act”.

History: 1990, Act 211, Eff. Mar. 28, 1991.

Popular name: Parental Consent Law

722.902 Definitions.

Section 2. As used in this act:

(a) “Abortion” means the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus. Abortion does not include the use or prescription of a drug or device intended as a contraceptive.

(b) “Medical emergency” means that condition which, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate an immediate abortion of that woman's pregnancy to avert her death, or for which a delay in performing an abortion will create serious risk of substantial and irreversible impairment of a major bodily function.

(c) “Minor” means a person under the age of 18 years who is not emancipated pursuant to section 4 of Act No. 293 of the Public Acts of 1968, being section 722.4 of the Michigan Compiled Laws.

(d) “Next friend” means a person who is not 1 of the following:

(i) A physician who performs abortions.

(ii) A person who is employed by, or receives financial consideration from, a physician who performs abortions or an organization that provides abortions or abortion counseling and referral services.

(iii) A person who serves as a board member or volunteer to an organization that provides abortions or abortion counseling and referral services.

History: 1990, Act 211, Eff. Mar. 28, 1991;—Am. 1992, Act 244, Eff. Mar. 31, 1993.

Popular name: Parental Consent Law

722.903 Consent to abortion on minor; petition for waiver of parental consent.

Section 3. (1) Except as otherwise provided in this act, a person shall not perform an abortion on a minor without first obtaining the written consent of the minor and 1 of the parents or the legal guardian of the minor.

(2) If a parent or the legal guardian is not available or refuses to give his or her consent, or if the minor elects not to seek consent of a parent or the legal guardian, the minor may petition the probate court pursuant to section 4 for a waiver of the parental consent requirement of this section.

History: 1990, Act 211, Eff. Mar. 28, 1991.

Popular name: Parental Consent Law

722.904 Jurisdiction of probate court; confidential and expeditious proceedings; granting waiver of parental consent; reporting suspected child abuse; duties of probate court on disclosure of sexual abuse; “child abuse” and “sexual abuse” defined.

Section 4. (1) The probate court has jurisdiction of proceedings related to a minor's petition for a waiver of parental consent.

(2) Proceedings held pursuant to this act shall be completed with confidentiality and sufficient expedition to provide an effective opportunity for the minor to provide self-consent to an abortion, in accordance with all of the following:

(a) The probate court shall, upon its first contact with a minor seeking a waiver of parental consent under this act, provide the minor with notice of the minor's right to all of the following:

- (i) Confidentiality of the proceedings, including the right to use initials in the petition.
- (ii) Court appointment of an attorney or guardian ad litem.
- (iii) Assistance with preparing and filing the petition.

(b) A minor may file a petition for waiver of parental consent in the probate court of the county in which the minor resides. For purposes of this act, the county in which the minor resides means the county in which the minor's residence is located or the county in which the minor is found.

(c) Upon request of the minor, the probate court shall provide the minor with assistance in preparing and filing the petition for waiver of parental consent.

(d) A minor may file a petition for waiver of parental consent under this act on her own behalf or through a next friend. The minor may use initials or some other means of assuring confidentiality in the petition.

(e) Upon request of the minor, the probate court shall appoint an attorney or guardian ad litem within 24 hours to represent the minor in proceedings under this section.

(f) A minor is not required to pay a fee for proceedings under this section.

(g) A hearing on a petition for waiver of parental consent under this act shall be held within 72 hours, excluding Sundays and holidays, after the petition is filed and shall be closed to the public. All records of proceedings related to the petition for waiver of parental consent under this act are confidential.

(h) The probate court that hears the petition for waiver of parental consent shall issue and make a part of the confidential record its specific findings of fact and conclusions of law in support of its ruling either on the record or in a written opinion.

(i) A written order granting or denying a petition for waiver of parental consent filed pursuant to this act shall be issued within 48 hours, excluding Sundays and holidays, after the hearing on the petition is held.

(3) The probate court shall grant a waiver of parental consent if it finds either of the following:

(a) The minor is sufficiently mature and well-enough informed to make the decision regarding abortion independently of her parents or legal guardian.

(b) The waiver would be in the best interests of the minor.

(4) A minor who is denied a waiver under this section may appeal the probate court's decision to the court of appeals. Appeal proceedings shall be expedited and confidential. The notice of appeal shall be filed within 24 hours of the issuance of the order denying the petition. The appeal shall be perfected within 72 hours, excluding Sundays and holidays, from the filing of the notice of appeal.

(5) The confidentiality requirements of this section do not prevent the probate court from reporting suspected child abuse under section 4 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.624 of the Michigan Compiled Laws.

(6) If a minor who is seeking a waiver of parental consent reveals to the probate court that she is the victim of sexual abuse, and that her pregnancy is, or may be, the result of sexual abuse, the probate court shall immediately do all of the following:

(a) Report the suspected sexual abuse to the department of social services or a law enforcement agency pursuant to the child protection law, Act No. 238 of the Public Acts of 1975, being sections 722.621 to 722.636 of the Michigan Compiled Laws.

(b) Inform the minor that there are laws designed to protect her, including all of the following provisions of chapter XIIA of the probate code, Act No. 288 of the Public Acts of 1939, being sections 712A.1 to 712A.28 of the Michigan Compiled Laws:

(i) That a law enforcement officer may without court order take the minor into temporary protective custody if, after investigation, the officer has reasonable grounds to conclude that the minor's health, safety, or welfare would be endangered by leaving her in the custody of her parent or legal guardian.

(ii) That the juvenile division of the probate court may, upon learning of the suspected sexual abuse, immediately hold a preliminary inquiry to determine whether a petition for court jurisdiction should be filed or whether other action should be taken.

(iii) That the juvenile court shall appoint an attorney to represent the minor in protective proceedings.

(iv) That after a petition has been filed, the juvenile court may order that the minor be placed with someone other than her parent or legal guardian pending trial or further court order if such placement is necessary to avoid substantial risk to the minor's life, physical health, or mental well-being.

(7) As used in this section, "child abuse" and "sexual abuse" mean those terms as defined in section 2 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.622 of the Michigan Compiled Laws.

History: 1990, Act 211, Eff. Mar. 28, 1991.

Popular name: Parental Consent Law

722.905 Medical emergency abortion.

Section 5. The requirements of Section 3 do not apply to an abortion performed pursuant to a medical emergency.

History: 1990, Act 211, Eff. Mar. 28, 1991;—Am. 1992, Act 244, Eff. Mar. 31, 1993.

Popular name: Parental Consent Law

722.906 Residency of minor.

Section 6. The requirements of this act apply regardless of whether the minor is a resident of this state.

History: 1990, Act 211, Eff. Mar. 28, 1991.

Popular name: Parental Consent Law

722.907 Violation as misdemeanor; failure to obtain parental consent or copy of waiver as evidence in civil action; exemplary damages.

Section 7. (1) A person who intentionally performs an abortion in violation of this act is guilty of a misdemeanor.

(2) A person's failure to obtain either parental consent pursuant to this act or a copy of a waiver granted under section 4 before performing an abortion on a minor is prima facie evidence in appropriate civil actions of his or her failure to obtain informed consent to perform the abortion or of his or her interference with family relations. A court shall not construe the law of this state to preclude exemplary damages in a civil action related to violations of this act.

History: 1990, Act 211, Eff. Mar. 28, 1991.

Popular name: Parental Consent Law

722.908 Right to abortion not created; prohibited conduct.

Section 8. (1) This act does not create a right to an abortion.

(2) Notwithstanding any other provision of this act, a person shall not perform an abortion that is prohibited by law.

History: 1990, Act 211, Eff. Mar. 28, 1991.

Popular name: Parental Consent Law

722.909 Repealed. 1991, Act 80, Imd. Eff. July 18, 1991.

Compiler's note: The repealed section pertained to required information for certain pupils and standardized information form.

Popular name: Parental Consent Law

THE CHILDREN'S OMBUDSMAN ACT

Act 204 of 1994

AN ACT to establish the children's ombudsman office; and to prescribe the powers and duties of the children's ombudsman, certain state departments and officers, and certain county and private agencies serving children; and to provide remedies from certain administrative acts.

History: 1994, Act 204, Eff. Jan. 1, 1995;—Am. 2004, Act 560, Imd. Eff. Jan. 3, 2005.

The People of the State of Michigan enact:

722.921 Short title.

Sec. 1. This act shall be known and may be cited as “the children's ombudsman act”.

History: 1994, Act 204, Eff. Jan. 1, 1995.

722.922 Definitions.

Sec. 2. As used in this act:

(a) "Administrative act" includes an action, omission, decision, recommendation, practice, or other procedure of the department, an adoption attorney, or a child placing agency with respect to a particular child related to adoption, foster care, or protective services.

(b) "Adoption attorney" means that term as defined in section 22 of the adoption code, MCL 710.22.

(c) "Adoption code" means chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70.

(d) "Central registry" means that term as defined in section 2 of the child protection law, MCL 722.622.

(e) "Child" means an individual under the age of 18.

(f) "Child abuse" and "child neglect" mean those terms as defined in section 2 of the child protection law, MCL 722.622.

(g) "Child caring institution" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(h) "Child placing agency" means an organization licensed or approved by the department to receive children for placement in private family homes for foster care or adoption and to provide services related to adoption.

(i) "Complainant" means an individual who makes a complaint as provided in section 5.

(j) "Child protection law" means the child protection law, 1975 PA 238, MCL 722.621 to 722.638.

(k) "Children's ombudsman" or "ombudsman" means the individual appointed to the office of children's ombudsman under section 3.

(l) "Closed session" means that term as defined in the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(m) "Department" means the family independence agency.

(n) "Foster care" means care provided to a child in a foster family home, foster family group home, or child caring institution licensed or approved by the department under 1973 PA 116, MCL 722.111 to 722.128, or care provided to a child in a relative's home under a court order.

(o) "Office" means the children's ombudsman office established under section 3.

History: 1994, Act 204, Eff. Jan. 1, 1995;—Am. 2004, Act 560, Imd. Eff. Jan. 3, 2005.

722.923 Children's ombudsman; establishment; appointment; removal.

Sec. 3. (1) As a means of effecting changes in policy, procedure, and legislation, educating the public, investigating and reviewing actions of the department, child placing agencies, or child caring institutions, monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, treatment, and improving delivery of care of children in foster care and adoptive homes, the children's ombudsman is established as an autonomous entity in the department of management and budget.

(2) The governor shall appoint an individual as the ombudsman, with the advice and consent of the senate. The individual shall be qualified by training and experience to perform the duties and exercise the powers of the children's ombudsman and the children's ombudsman office as provided in this act.

(3) The governor may remove the children's ombudsman from office for cause that includes, but is not limited to, incompetency to properly exercise duties, official misconduct, habitual or willful neglect of duty, or other misfeasance or malfeasance in connection with the operation of the office of the children's ombudsman. The governor shall report the reason for the removal to the legislature.

(4) The children's ombudsman serving in office on the effective date of the amendatory act that added this subsection shall serve at the pleasure of the governor.

History: 1994, Act 204, Eff. Jan. 1, 1995;—Am. 2004, Act 560, Imd. Eff. Jan. 3, 2005.

722.924 Procedures.

Sec. 4. (1) The ombudsman shall establish procedures for the office for budgeting, expending money, and employing personnel according to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594. Subject to annual appropriations, the ombudsman shall employ sufficient personnel to carry out the duties and powers prescribed by this act.

(2) The ombudsman shall establish procedures for receiving and processing complaints from complainants and individuals not meeting the definition of complainant, conducting investigations, holding informal hearings, and reporting findings and recommendations resulting from investigations.

(3) Personnel employed by the office of the children's ombudsman shall receive mandatory training conducted by the Michigan domestic violence prevention and treatment board in domestic violence and in handling complaints of child abuse or child neglect that involve a history of domestic violence.

(4) Any individual may submit a complaint to the ombudsman. The ombudsman has the sole discretion and authority to determine if a complaint falls within his or her duties and powers to investigate and if a complaint involves an administrative act. The ombudsman may initiate an investigation without receiving a complaint. The ombudsman may initiate an investigation upon receipt of a complaint from an individual not meeting the definition of complainant. An individual not meeting the definition of complainant is not entitled to receive information under this act as if he or she is a complainant. The individual is entitled to receive the recommendations of the ombudsman and the department's response to the recommendations of the ombudsman in accordance with state and federal law. During the course of an investigation, the ombudsman may refer a case to the department if the ombudsman determines that the department received a complaint on the case, but did not conduct a field investigation. If the ombudsman refers a case to the department, the department shall conduct a field investigation of the case or provide notice to the ombudsman why a field investigation was not conducted, or what alternative steps may have been taken to address the situation. If a field investigation has been conducted, the department shall report the results to the ombudsman.

History: 1994, Act 204, Eff. Jan. 1, 1995;—Am. 2004, Act 560, Imd. Eff. Jan. 3, 2005.

722.925 Individuals making complaint to children's ombudsman.

Sec. 5. All of the following individuals may make a complaint to the ombudsman with respect to a particular child, alleging that an administrative act is contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds:

- (a) The child, if he or she is able to articulate a complaint.
- (b) A biological parent of the child.
- (c) A foster parent of the child.
- (d) An adoptive parent or a prospective adoptive parent of the child.
- (e) A legally appointed guardian of the child.
- (f) A guardian ad litem of the child.
- (g) An adult who is related to the child within the fifth degree by marriage, blood, or adoption, as defined in section 22 of the adoption code, MCL 710.22.
- (h) A Michigan legislator.
- (i) An individual required to report child abuse or child neglect under section 3 of the child protection law, 1975 PA 238, MCL 722.623.
- (j) An attorney for any individual described in subdivisions (a) to (g).

History: 1994, Act 204, Eff. Jan. 1, 1995;—Am. 2004, Act 560, Imd. Eff. Jan. 3, 2005.

722.925a Children's ombudsman; powers.

Sec. 5a. The children's ombudsman has the authority to do all of the following:

- (a) Pursue all necessary action, including, but not limited to, legal action, to protect the rights and welfare of a child under the jurisdiction, control, or supervision of the department, the Michigan children's institute, the family division of circuit court under section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, a child caring institution, or a child placing agency.
- (b) Pursue legislative advocacy in the best interests of children.
- (c) Review policies and procedures relating to the department's involvement with children and make recommendations for improvement.
- (d) Review each departmental death review team study in which the child's death may have resulted from child abuse or child neglect. As a result of the reviews, the ombudsman may recommend policies, measures, or procedures to prevent future similar occurrences.

History: Add. 2004, Act 560, Imd. Eff. Jan. 3, 2005.

***** 722.926 ENACTING SECTION 2 OF 2004 PA 560 REPEALS MCL 722.936 5 YEARS AFTER THE EFFECTIVE DATE OF THIS ACT; ENACTING SECTION 2 SHOULD EVIDENTLY READ 722.926 *****
***** 722.926 SUBSECTION 6(e) IS REPEALED BY ACT 560 OF 2004 EFFECTIVE JANUARY 3, 2010 *****

722.926 Children's ombudsman; authority.

Sec. 6. The ombudsman may do all of the following in relation to a child who may be a victim of child abuse or child neglect:

(a) Upon his or her own initiative or upon receipt of a complaint, investigate an administrative act that is alleged to be contrary to law or rule, contrary to policy of the department or a child placing agency, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds. The ombudsman has sole discretion to determine if a complaint involves an administrative act.

(b) Decide, in his or her discretion, whether to investigate an administrative act.

(c) Upon its own initiative or upon receipt of a complaint from a complainant, conduct a preliminary investigation to determine whether an adoption attorney may have committed an administrative act that is alleged to be contrary to law, rule, or the Michigan rules of professional conduct adopted by the Michigan supreme court.

(d) Except as otherwise provided in this subdivision, access records and reports necessary to carry out the ombudsman's powers and duties under this act to the same extent and in the same manner as provided to the department under the provisions of the child protection law. The ombudsman shall be provided access to medical records in the same manner as access is provided to the department under section 16281 of the public health code, 1978 PA 368, MCL 333.16281. The ombudsman shall be provided access to mental health records in the same manner as access is provided to the department in section 748a of the mental health code, 1978 PA 258, MCL 330.1748a, subject to section 9. The ombudsman is subject to the same standards for safeguarding the confidentiality of information under this section and the same sanctions for unauthorized release of information as the department.

(e) Request a subpoena from a court requiring the production of a record or report necessary to carry out the ombudsman's duties and powers. If the person to whom a subpoena is issued fails or refuses to produce the record or report, the ombudsman may petition the court for enforcement of the subpoena.

(f) Hold informal hearings and request that individuals appear before the ombudsman and give testimony or produce documentary or other evidence that the ombudsman considers relevant to a matter under investigation.

(g) Make recommendations to the governor and the legislature concerning the need for children's protective services, adoption, or foster care legislation, policy, or practice without prior review by other offices, departments, or agencies in the executive branch in order to facilitate rapid implementation of recommendations or for suggested improvements to the recommendations. However, no other office, department, or agency shall prohibit the release of an ombudsman's recommendation to the governor or the legislature.

History: 1994, Act 204, Eff. Jan. 1, 1995;—Am. 2004, Act 560, Imd. Eff. Jan. 3, 2005.

722.927 Decision to investigate; notice; misconduct by adoption attorney; pursuing administrative remedies or channels of complaint; further investigation; violation of state or federal criminal law; complaint against child placing agency; petition requesting court jurisdiction or termination of parental rights.

Sec. 7. (1) Upon deciding to investigate a complaint, from a complainant and an individual not meeting the definition of complainant, the ombudsman shall notify the complainant or the individual not meeting the definition of complainant of the decision to investigate and shall notify the department, adoption attorney, or child placing agency of the intention to investigate. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant or the individual not meeting the definition of complainant and the department, adoption attorney, or child placing agency of the decision and of the reasons for the ombudsman's action.

(2) If the preliminary investigation described in section 6 leads the ombudsman to believe that the matter may involve misconduct by an adoption attorney, the ombudsman shall immediately refer the complaint to the attorney grievance commission of the state bar of Michigan.

(3) The ombudsman shall advise a complainant of administrative remedies and may advise the individual to pursue all administrative remedies or channels of complaint open to the complainant before pursuing a

complaint with the ombudsman. Subsequent to the administrative processing of a complaint, the ombudsman may conduct further investigations of a complaint upon the request of the complainant or upon the ombudsman's own initiative.

(4) If the ombudsman finds in the course of an investigation that an individual's action is in violation of state or federal criminal law, the ombudsman shall immediately report that fact to the county prosecutor or the attorney general. If the complaint is against a child placing agency, the ombudsman shall refer the matter to the department for further action with respect to licensing.

(5) The ombudsman may file a petition on behalf of a child requesting the court to take jurisdiction under section 2(b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or a petition for termination of parental rights under section 19b of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, if the ombudsman is satisfied that the complainant has contacted the department, the prosecuting attorney, the child's attorney, and the child's guardian ad litem, if any, and that none of these persons intend to file a petition as described in this subsection.

History: 1994, Act 204, Eff. Jan. 1, 1995;—Am. 2004, Act 560, Imd. Eff. Jan. 3, 2005.

722.928 Family independence agency and child placing agency; duties; information to be provided to biological parent, adoptive parent, or foster parent; access to departmental computer networks.

Sec. 8. (1) The department and a child placing agency shall do all of the following:

(a) Upon the ombudsman's request, grant the ombudsman or his or her designee access to all information, records, and documents in the possession of the department or child placing agency that the ombudsman considers relevant and necessary in an investigation.

(b) Assist the ombudsman to obtain the necessary releases of those documents that are specifically restricted.

(c) Upon the ombudsman's request, provide the ombudsman with progress reports concerning the administrative processing of a complaint.

(d) Upon the ombudsman's request, provide the ombudsman information he or she requests under subdivision (a) within 10 business days after the request. If the department determines that release of the information would violate federal or state law, the ombudsman shall be notified of that determination within the same 10-day deadline.

(2) The department, an attorney involved with an adoption, and a child placing agency shall provide information to a biological parent, prospective adoptive parent, or foster parent regarding the provisions of this act.

(3) The ombudsman, the department, and the department of information technology shall enter an agreement not later than June 30, 2005 that shall ensure that the ombudsman has access, in the ombudsman's own office, to departmental computer networks pertaining to protective services, foster care, and adoption, including the central registry, service workers support system/foster care, adoption, juvenile justice (SWSS), and customer information management system (CIMS) unless otherwise prohibited by state or federal law, or the release of the information to the ombudsman would jeopardize federal funding. The cost of implementing this subsection shall be negotiated among the office of the children's ombudsman, the department, and the department of information technology.

History: 1994, Act 204, Eff. Jan. 1, 1995;—Am. 2004, Act 560, Imd. Eff. Jan. 3, 2005.

722.929 Confidentiality of record of ombudsman; disclosure; limitations.

Sec. 9. (1) Subject to subsections (2) through (7), a record of the children's ombudsman's office is confidential, shall only be used for purposes set forth in this act, is not subject to court subpoena, and is not discoverable in a legal proceeding. A record of the children's ombudsman's office is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. If the ombudsman identifies action or inaction by the state, through its agencies or services, that failed to protect children, the ombudsman shall provide his or her findings and recommendations to the agency affected by those findings, and make those findings and recommendations available to the complainant and the legislature upon request, to the extent consistent with state or federal law. The ombudsman shall not disclose any information that impairs the rights of the child or the child's parents or guardians.

(2) The ombudsman may release information to a complainant or to a closed session of a legislative committee that has jurisdiction over family and children's services issues regarding the department's handling of a case under the child protection law that is obtained or generated during an investigation conducted by the office.

(3) Unless otherwise part of the public record, the office shall not release any of the following confidential

information to the general public:

- (a) Records relating to mental health evaluation or treatment of a parent or child.
 - (b) Records relating to the evaluation or treatment of a substance abuse-related disorder of a parent or child.
 - (c) Records relating to medical diagnosis or treatment of a parent or child.
 - (d) Records relating to domestic violence-related services and sexual assault services provided to a parent or child.
 - (e) Records relating to educational services provided to a parent or child.
- (4) Notwithstanding subsection (3), if the ombudsman determines that disclosure of confidential information is necessary to identify, prevent, or respond to the abuse or neglect of a child, the ombudsman may disclose information in his or her possession to the department or a court. The ombudsman shall not release the address, telephone number, or other information regarding the whereabouts of a victim or suspected victim of domestic violence unless ordered to by a court.
- (5) The ombudsman shall not disclose information relating to an ongoing law enforcement investigation or an ongoing children's protective services investigation.
- (6) The ombudsman shall not disclose the identity of an individual making a child abuse or neglect complaint under the child protection law unless that individual's written permission is obtained first or a court has ordered the ombudsman to release that information.
- (7) The ombudsman may release an individual's identity who makes an intentionally false report of child abuse or neglect under the child protection law.

History: 1994, Act 204, Eff. Jan. 1, 1995;—Am. 2004, Act 560, Imd. Eff. Jan. 3, 2005.

722.930 Report of findings; recommendations; consultation with individual, department, or child placing agency; publication of adverse opinion; notice of actions; information provided to complainant; report.

Sec. 10. (1) The ombudsman shall prepare a report of the factual findings of an investigation and make recommendations to the department or child placing agency if the ombudsman finds 1 or more of the following:

- (a) A matter should be further considered by the department or child placing agency.
 - (b) An administrative act or omission should be modified, canceled, or corrected.
 - (c) Reasons should be given for an administrative act or omission.
 - (d) Other action should be taken by the department or child placing agency.
- (2) Before announcing a conclusion or recommendation that expressly or by implication criticizes an individual, the department, or a child placing agency, the ombudsman shall consult with that individual, the department, or the child placing agency. When publishing an opinion adverse to the department or child placing agency, the ombudsman shall include in the publication any statement of reasonable length made to the ombudsman by the department or child placing agency in defense or mitigation of the action. The ombudsman may request to be notified by the department or child placing agency, within a specified time, of any action taken on any recommendation presented.
- (3) The ombudsman shall notify the complainant of the actions taken by the ombudsman and by the department or child placing agency.
- (4) The ombudsman may provide to the complainant the following information:
- (a) A copy of the ombudsman's report regarding the investigation's findings, recommendations to the department made according to the investigation, the department's response to the ombudsman's findings and recommendations, and any epilogue to the ombudsman's report and the department's response.
 - (b) Information that has otherwise been made public.
- (5) The ombudsman shall not release information to the individual making the complaint that will endanger the health or welfare of a child or another individual.
- (6) The ombudsman shall submit to the governor, the director of the department, and the legislature an annual report on the ombudsman's conduct, including any recommendations regarding the need for legislation or for change in rules or policies.

History: 1994, Act 204, Eff. Jan. 1, 1995;—Am. 2004, Act 560, Imd. Eff. Jan. 3, 2005.

722.931 Penalty for filing complaint or cooperating in investigation prohibited; intentional false complaint.

Sec. 11. (1) Subject to subsection (4), an official, the department, or a child placing agency shall not penalize any person for filing a complaint or cooperating with the ombudsman in investigating a complaint.

(2) An individual, the department, an adoption attorney, or a child placing agency shall not hinder the

lawful actions of the ombudsman or employees of the ombudsman.

(3) A report by the ombudsman is not subject to prior approval by a person outside of the office.

(4) An individual who intentionally makes a false complaint of child abuse or neglect under this act is subject to the penalties contained in section 13(5) of the child protection law, MCL 722.633.

History: 1994, Act 204, Eff. Jan. 1, 1995;—Am. 2004, Act 560, Imd. Eff. Jan. 3, 2005.

722.932 Authority granted under other acts or rules.

Sec. 12. The authority granted the ombudsman under this act is in addition to the authority granted under the provisions of any other act or rule under which the remedy or right of appeal or objection is provided for a person, or any procedure provided for the inquiry into or investigation of any matter. The authority granted the ombudsman does not limit or affect the remedy or right of appeal or objection and is not an exclusive remedy or procedure.

History: 1994, Act 204, Eff. Jan. 1, 1995.

722.933-722.935 Repealed. 2004, Act 560, Imd. Eff. Jan. 3, 2005.

Compiler's note: The repealed sections pertained to a registry of adoption attorneys and the effective date and conditional effective date of the act.

FOSTER CARE AND ADOPTION SERVICES ACT
Act 203 of 1994

AN ACT to establish certain standards for foster care and adoption services for children and their families; and to prescribe powers and duties of certain state agencies and departments and adoption facilitators.

History: 1994, Act 203, Eff. Jan. 1, 1995.

The People of the State of Michigan enact:

722.951 Short title.

Sec. 1. This act shall be known and may be cited as the “foster care and adoption services act”.

History: 1994, Act 203, Eff. Jan. 1, 1995.

722.952 Definitions.

Sec. 2. As used in this act:

- (a) “Adoptee” means a child who is to be adopted or who is adopted.
- (b) “Adoption attorney” means that term as defined in section 22 of the adoption code, MCL 710.22.
- (c) “Adoption code” means the Michigan adoption code, chapter X of 1939 PA 288, MCL 710.21 to 710.70.
- (d) “Adoption facilitator” means a child placing agency or an adoption attorney.
- (e) “Adoptive parent” means the parent or parents who adopt a child in accordance with the adoption code.
- (f) “Agency placement” means that term as defined in section 22 of the adoption code, MCL 710.22.
- (g) “Child placing agency” means that term as defined in section 1 of 1973 PA 116, MCL 722.111.
- (h) “Department” means the family independence agency.
- (i) “Direct placement” means that term as defined in section 22 of the adoption code, MCL 710.22.
- (j) “Foster care” means a child's placement outside the child's parental home by and under the supervision of a child placing agency, the court, the department, or the department of community health.
- (k) “Preplacement assessment” means an assessment of a prospective adoptive parent as described in section 23f of the adoption code, MCL 710.23f.
- (l) “Supervising agency” means the department if a child is placed in the department's care for foster care, or a child placing agency in whose care a child is placed for foster care.

History: 1994, Act 203, Eff. Jan. 1, 1995;—Am. 1997, Act 172, Eff. Mar. 31, 1998.

722.953 Purpose of act.

Sec. 3. The purposes of this act are all of the following:

- (a) To assist foster parents to provide a stable, loving family environment for children who are placed outside of their homes on a temporary basis.
- (b) To help eliminate barriers to the adoption of children and to promote the provision of a stable and loving family environment to children who are without permanent families.
- (c) To promote the well-being and safety of all children who receive foster care or are adopted under the laws of this state.
- (d) To protect and assist prospective adoptive families as they negotiate the adoption process.
- (e) To regulate child placing agencies who certify foster parents and serve adoptees and adoptive families in this state.
- (f) To regulate adoption attorneys who facilitate direct placement adoptions.

History: 1994, Act 203, Eff. Jan. 1, 1995.

722.954 Licensure as foster parent; orientation as condition to certification; written information to be provided foster parents before placement; confidentiality.

Sec. 4. (1) Before certifying an individual for licensure as a foster parent, a child placing agency shall conduct an orientation designed to ensure the individual's understanding of the purposes of foster care, including the temporary nature of foster care and the ultimate goal of returning the child to his or her permanent family or preparing the child for adoption.

(2) Before placing a child with foster parents, a child placing agency shall provide the foster parents with written information including all of the following:

- (a) Any history of abuse or neglect of the child.
- (b) All known emotional and psychological problems of the child.
- (c) All behavior problems of the child that might present any risk to the foster family.

(d) Any other information necessary to enable the foster family to provide a stable, safe, and healthy environment for the foster child and for other members of the foster family.

(3) The child placing agency shall explain to the foster parents that the information provided under subsection (2) about the child and the child's family is confidential.

History: 1994, Act 203, Eff. Jan. 1, 1995.

722.954a Placement of child in supervising agency's care; determination of placement with relative; documentation of decision; review hearing.

Sec. 4a. (1) If a child has been placed in a supervising agency's care under chapter XIIA of 1939 PA 288, MCL 712A.1 to 712A.32, the supervising agency shall comply with this section and sections 4b and 4c.

(2) Upon removal, as part of a child's initial case service plan as required by rules promulgated under 1973 PA 116, MCL 722.111 to 722.128, and by section 18f of chapter XIIA of 1939 PA 288, MCL 712A.18f, the supervising agency shall, within 30 days, identify, locate, and consult with relatives to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs as an alternative to foster care. Not more than 90 days after the child's removal from his or her home, the supervising agency shall do all of the following:

(a) Make a placement decision and document in writing the reason for the decision.

(b) Provide written notice of the decision and the reasons for the placement decision to the child's attorney, guardian, guardian ad litem, mother, and father; the attorneys for the child's mother and father; each relative who expresses an interest in caring for the child; the child if the child is old enough to be able to express an opinion regarding placement; and the prosecutor.

(3) A person who receives a written decision described in subsection (2) may request in writing, within 5 days, documentation of the reasons for the decision, and if the person does not agree with the placement decision, he or she may request that the child's attorney review the decision to determine if the decision is in the child's best interest. If the child's attorney determines the decision is not in the child's best interest, within 14 days after the date of the written decision the attorney shall petition the court that placed the child out of the child's home for a review hearing. The court shall commence the review hearing not more than 7 days after the date of the attorney's petition and shall hold the hearing on the record.

History: Add. 1997, Act 172, Eff. Mar. 31, 1998.

722.954b Permanent placement; 12-month goal; inclusion in directory of children; in-home visits.

Sec. 4b. (1) A supervising agency shall strive to achieve a permanent placement for each child in its care, including either a safe return to the child's home or implementation of a permanency plan, no more than 12 months after the child is removed from his or her home. This 12-month goal shall not be extended or delayed for reasons such as a change or transfer of staff or worker at the supervising agency.

(2) If an adoptive family for a child has not been identified within 90 days after entry of an order of termination of parental rights, the supervising agency shall submit the necessary information for inclusion of the child in the directory of children described in section 8.

(3) The supervising agency shall require that its worker make monthly visits to the home or facility in which each child is placed. The supervising agency shall also require its worker to monitor and assess in-home visitation between the child and his or her parents. To ensure the occurrence of in-home visits required under this subsection, the supervising agency shall institute a flexible schedule to provide a number of hours outside of the traditional workday to accommodate the schedules of the individuals involved.

History: Add. 1997, Act 172, Eff. Mar. 31, 1998.

722.954c Release of child's medical records; medical passport; contents; transfer; performance of assessment or psychological evaluation; medical examination.

Sec. 4c. (1) The supervising agency shall obtain from the parent, guardian, or custodian of each child who is placed in its care the name and address of the child's medical provider and a signed document for the release of the child's medical records. The supervising agency shall require that a child's medical provider remain constant while the child is in foster care, unless the child's current primary medical provider is a managed care health plan or unless doing so would create an unreasonable burden for the relative, foster parent, or other custodian.

(2) The supervising agency shall develop a medical passport for each child who comes under its care. The medical passport shall contain all of the following:

(a) All medical information required by policy or law to be provided to foster parents.

(b) Basic medical history.

(c) A record of all immunizations.

(d) Any other information concerning the child's physical and mental health.

(3) Each foster care worker who transfers a child's medical passport to another foster care worker shall sign and date the passport, verifying that he or she has sought and obtained the necessary information required under subsection (2) and any additional information required under department policy. The supervising agency shall provide a copy of each medical passport and updates as required by the department for maintenance in a central location.

(4) If a child under the care of a supervising agency has suffered sexual abuse, serious physical abuse, or mental illness, the supervising agency shall have an experienced and licensed mental health professional as defined under MCL 330.1100b(14)(a) or (b) or a social worker certified under section 1606 of the occupational code, 1980 PA 299, MCL 339.1606, who is trained in children's psychological assessments perform an assessment or psychological evaluation of the child. The costs of the assessment or evaluation shall be borne by the supervising agency. This subsection applies only to a child who is made a state ward on or after the effective date of the amendatory act that added this section.

(5) A child's supervising agency shall ensure that the child receives a medical examination when the child is first placed in foster care. One objective of this examination is to provide a record of the child's medical and physical status upon entry into foster care.

History: Add. 1997, Act 172, Eff. Mar. 31, 1998.

722.954d Annual report card.

Sec. 4d. The department shall publish an annual report card for each supervising agency that evaluates the achievements of that agency in obtaining permanency for children and making recommendations for the removal of barriers to permanency.

History: Add. 1997, Act 172, Eff. Mar. 31, 1998.

722.955 Registration of attorney with children's ombudsman; filing of compliance; reregistration; request for removal.

Sec. 5. Before providing services in a direct placement adoption as provided under the adoption code, an attorney shall register with the children's ombudsman by filing with the children's ombudsman a verified statement that the attorney is in compliance with all the requirements for an adoption attorney prescribed by section 22 of the adoption code, being section 710.22 of the Michigan Compiled Laws. An attorney who wishes to continue providing adoption services shall reregister with the children's ombudsman as provided in this section at least once every 5 years. An adoption attorney may request to be removed from the registry at any time.

History: 1994, Act 203, Eff. Jan. 1, 1995.

722.956 Adoption facilitator; duties; cost.

Sec. 6. (1) An adoption facilitator shall do all of the following:

(a) Provide a client with needed services related to adoption, including postadoption services, or make referrals to available resources in the community. The adoption facilitator shall emphasize the importance and availability of counseling for all parties to an adoption and explain that the prospective adoptive parent is required to pay for counseling for the birth parent or guardian unless the birth parent or guardian waives the counseling.

(b) Provide each individual who inquires about services with the pamphlet describing the adoption process prepared by the department under section 115m of the social welfare act, 1939 PA 280, MCL 400.115m. When providing services to an adoption client, the adoption facilitator shall review the pamphlet with the client and make sure the client understands the various alternatives that are available in the adoption process and how to get access to all of the following:

(i) The directory of children produced by the department under section 8.

(ii) The information contained in the registry of adoptive homes maintained by the department under section 8.

(iii) The public information forms on adoption facilitators maintained by the department pursuant to section 14d of 1973 PA 116, MCL 722.124d.

(c) Prepare and provide to each individual who inquires about services a written document that includes all of the following information:

(i) Types of adoptions the adoption facilitator handles.

(ii) A description of the services that the adoption facilitator provides.

(iii) A description of services that are available by referral.

- (iv) Eligibility requirements the adoption facilitator has for adoptive families, if any.
- (v) If the adoption facilitator is a child placing agency, the procedure used, or range of options the agency offers, for selecting a prospective adoptive parent for a child, including the role of the child's parent or guardian in the selection process.
- (vi) The extent to which the adoption facilitator permits or encourages the exchange of identifying information or contact between biological and adoptive parents.
- (vii) A description of postfinalization services that the adoption facilitator provides, if any.
- (viii) A schedule of all fees that the adoption facilitator charges for adoption services.
- (ix) A statement that each party to an adoption has a right to independent representation by an attorney and that 1 attorney may not represent both the biological parents or guardian and the prospective adoptive parents.
- (d) Insure that each prospective adoptive parent completes an orientation program consistent with requirements for orientation programs developed under administrative rules by the department.
- (e) Provide a prospective adoptive parent with written copies, other than those portions made confidential by state or federal law, of all of the following regarding the prospective adoptee:
 - (i) If not already provided under section 27 of chapter 10 of 1939 PA 288, MCL 710.27, the adoptee's nonidentifying information as listed and described by section 27(1) and (2) of chapter X of 1939 PA 288, MCL 710.27.
 - (ii) The petition or petitions that resulted in each placement of the child.
 - (iii) Initial and all updated case service plans concerning the child that were compiled during each foster care placement, whether in foster care, adoption, or otherwise.
- (f) No later than the time of the preadoptive or adoptive placement, prepare and provide to the prospective adoptive parent written verification that all of the information described in subdivision (e) has been provided to the prospective adoptive parent.
- (g) Not later than the time of the adoptee's preadoptive placement with the prospective adoptive parent, hold a conference with the prospective adoptive parent and do all of the following during that conference:
 - (i) Review and discuss the information provided to the prospective adoptive parent under subdivision (e).
 - (ii) Disclose to the prospective adoptive parent all other information known by or available to the adoption facilitator regarding the adoptee's medical and psychological needs.
 - (iii) Prepare and provide to the prospective adoptive parent a list of the adoptee's medical and psychological needs that are identified and discussed during the conference.
 - (iv) Prepare written verification for the signatures of the adoption facilitator and the prospective adoptive parent that the conference was held as required by this subdivision, and provide a copy of this written verification to the prospective adoptive parent.
- (2) The information required under subsection (1) shall be provided without cost to the biological parent or guardian or prospective adoptive parent.

History: 1994, Act 203, Eff. Jan. 1, 1995;—Am. 1998, Act 495, Eff. Mar. 1, 1999.

722.957 Adoption facilitator; placement based on age, race, religious affiliation, disability, or income level; participation of parent or guardian in selection of adoptive parent.

Sec. 7. (1) Except as provided in subsection (2), an adoption facilitator shall not refuse to provide services to a potential adoptive parent based solely on age, race, religious affiliation, disability, or income level. A child placing agency shall not make placement decisions based solely on age, race, religious affiliation, disability, or income level.

(2) Subsection (1), as related to religious affiliation, does not apply to a private child placing agency operated, supervised, or controlled by a religious institution or organization that limits services or gives preference to an applicant of the same religion.

(3) In an adoption in which a parent or guardian selects or participates in the selection of the adoptive parent, an adoption facilitator shall allow the parent or guardian the option of selecting from the adoption facilitator's entire pool of potential adoptive parents who have been determined suitable to be adoptive parents of adoptees.

History: 1994, Act 203, Eff. Jan. 1, 1995.

722.958 Rules; training; directory of children available for adoption; registry of adoptive homes; fee for maintaining directory information; foster parent resource centers; pilot project; report.

Sec. 8. (1) The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to ensure the comprehensive, high-quality training of foster care and adoption workers. It shall consult and may contract with colleges and universities, child placing agencies, and

professional organizations for the design and implementation of the training. The training shall stress cultural sensitivity, interagency cooperation, and respect for individuals and families.

(2) The department shall produce or contract with another person to produce a directory of children under the jurisdiction of the department who are available for adoption. The department shall make copies available throughout the state to ensure that interested individuals have reasonable access to the directory.

(3) The department shall establish and maintain a registry of adoptive homes to be used as a central clearinghouse for information about prospective adoptive parents. The department shall accept information from a prospective adoptive parent who has received a preplacement assessment with a finding that the individual is suitable to be the parent of an adoptee. The information shall be filed in a form and manner that will permit it to be readily accessible to biological parents or child placing agencies seeking adoptive homes for children. The department shall charge a prospective adoptive parent an initial fee of \$100.00 for maintaining the information in the registry and a renewal fee of \$50.00 for each year the prospective adoptive parent remains in the registry. The department shall provide information in the registry without charge to biological parents or child placing agencies who request it.

(4) The department may establish as pilot projects foster parent resource centers. Each resource center shall provide at least support for and coordination of respite care and assistance to foster parents in obtaining day care. Resource center staff shall pursue other activities designed to promote permanency for children, particularly children with special needs, such as support aimed at retaining foster parents. The department may fund the pilot foster parent resource centers using money appropriated to the department for the current fiscal year. After the pilot project has been in operation for 2 years, the department shall evaluate the pilot project on its organization, effectiveness, and success. The department shall report the results of this evaluation to the legislature, including in the report the number of foster parents who utilized the particular resource center and the top 10 concerns raised by those foster parents and how those concerns were handled.

History: 1994, Act 203, Eff. Jan. 1, 1995;—Am. 2002, Act 646, Imd. Eff. Dec. 23, 2002.

722.959 Effective date.

Sec. 9. This act shall take effect January 1, 1995.

History: 1994, Act 203, Eff. Jan. 1, 1995.

722.960 Conditional effective date.

Sec. 10. This act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

- (a) Senate Bill No. 299.
- (b) Senate Bill No. 721.
- (c) Senate Bill No. 723.
- (d) Senate Bill No. 724.
- (e) Senate Bill No. 725.
- (f) House Bill No. 4201.
- (g) House Bill No. 4428.
- (h) House Bill No. 4614.
- (i) House Bill No. 4638.

History: 1994, Act 203, Eff. Jan. 1, 1995.

FOSTER CARE INDEPENDENCE ACT

Act 215 of 2008

AN ACT to establish the foster care independence program; to provide certain services for certain youth in foster care due to child abuse or child neglect; and to prescribe the duties of certain state departments.

History: 2008, Act 215, Imd. Eff. July 16, 2008.

The People of the State of Michigan enact:

722.981 Short title; definitions.

Sec. 1. (1) This act shall be known and may be cited as the "foster care independence act".

(2) As used in this act:

(a) "Adjudicated delinquent" means an individual found to have committed an offense that, if committed by an adult, would be a criminal offense.

(b) "Child abuse" and "child neglect" mean those terms as defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622.

(c) "Child placing agency" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(d) "Department" means the department of human services.

(e) "Foster care" means 24-hour substitute care for children placed away from their parents or guardians for whom the state agency or child placing agency has placement and care responsibility. Foster care placement includes, but is not limited to, placement in foster family homes, child care institutions, and preadoptive placements.

(f) "Young adult" means an individual 14 years of age or older but less than 21 years of age.

History: 2008, Act 215, Imd. Eff. July 16, 2008.

722.982 Foster care independence program; establishment; conditions; services.

Sec. 2. (1) If this state receives federal money for the purposes described in this act and the federal money is not reduced below the level this state received on the effective date of this act and if public and private partners continue to provide the services they provided on the effective date of this act, the department shall establish the foster care independence program to offer education, training, employment, and financial support for eligible young adults leaving foster care.

(2) Subject to the availability of federal, state, and local funds, the program may include the following services:

(a) Identify young adults who are likely to remain in foster care until 18 years of age and help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities, including smoking avoidance, nutrition education, and pregnancy prevention.

(b) Help young adults who are likely to remain in foster care until 18 years of age receive education, training, and services necessary to obtain employment.

(c) Help young adults who are likely to remain in foster care until 18 years of age prepare for and enter postsecondary training and education institutions.

(d) Provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults.

(e) Provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood.

History: 2008, Act 215, Imd. Eff. July 16, 2008.

722.983 Services; eligibility; exceptions; services provided to young adults 14 years of age and older; availability of services through 20 years of age; services provided on as-needed basis.

Sec. 3. (1) A young adult is eligible for services under this act if he or she is or has been in a foster care placement through the state or a child placing agency based on child abuse or child neglect on or after his or her fourteenth birthday.

(2) A young adult is not eligible for services under this act if 1 or more of the following apply:

(a) The young adult is in an out-of-home placement solely as an adjudicated delinquent. If the young adult

is currently an adjudicated delinquent but met the eligibility criteria before his or her adjudication, services may be provided under this act.

(b) The young adult was never in an out-of-home placement based on child abuse or child neglect.

(c) The young adult is in a detention facility or other state-operated facility.

(3) Services under this act may be provided to eligible young adults 14 years of age and older regardless of the permanency planning goal. Services under this act may be available to all eligible young adults after case closure through 20 years of age. Services under this act may be provided on an "as-needed" basis.

History: 2008, Act 215, Imd. Eff. July 16, 2008.

722.984 Goods and services.

Sec. 4. (1) The department may provide at least all of the following goods and services to eligible young adults in the foster care independence program:

(a) Services that are not available from other funding sources or agencies for eligible young adults currently in the foster care system and for young adults released from foster care before reaching 21 years of age.

(b) Educational support.

(c) Classes or groups on interpersonal communication and building and maintaining relationships and classes or groups on independent living skills.

(d) Stipends to cover the cost of utility deposits, security deposits, and first month's rent to eligible young adults who are leaving foster care or have left foster care because they have reached 18 years of age but have not reached 21 years of age. The first month's rent and damage deposit may only be provided to young adults 18 to 21 years of age who are leaving foster care or who have left foster care because they attained 18 or 19 years of age and have not reached 21 years of age.

(2) The department shall make known a list of goods and services provided under the program established in this act.

History: 2008, Act 215, Imd. Eff. July 16, 2008.

722.985 Other goods and services.

Sec. 5. The department may provide goods and services allowed under federal law and any other goods and services the department considers appropriate.

History: 2008, Act 215, Imd. Eff. July 16, 2008.

ACKNOWLEDGMENT OF PARENTAGE ACT

Act 305 of 1996

AN ACT to prescribe procedures for and the contents of acknowledgments of parentage; to state the effects of those acknowledgments; to provide procedures and criteria for revoking acknowledgments; and to prescribe powers and duties of certain state officers and employees.

History: 1996, Act 305, Eff. June 1, 1997.

The People of the State of Michigan enact:

722.1001 Short title.

Sec. 1. This act shall be known and may be cited as the “acknowledgment of parentage act”.

History: 1996, Act 305, Eff. June 1, 1997.

722.1002 Definitions.

Sec. 2. As used in this act:

- (a) “Acknowledgment” means an acknowledgment of parentage executed as provided in this act.
- (b) “Child” means a child conceived and born to a woman who was not married at the time of conception or the date of birth of the child, or a child that the circuit court determines was born or conceived during a marriage but is not the issue of that marriage.
- (c) “Court” means the circuit court.
- (d) “Father” means the man who signs an acknowledgment of parentage of a child.
- (e) “State registrar” means that term as defined in section 2805 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.2805 of the Michigan Compiled Laws.

History: 1996, Act 305, Eff. June 1, 1997.

722.1003 Acknowledgment of parentage; form; validity; signatures; copy.

Sec. 3. (1) If a child is born out of wedlock, a man is considered to be the natural father of that child if the man joins with the mother of the child and acknowledges that child as his child by completing a form that is an acknowledgment of parentage.

(2) An acknowledgment of parentage form is valid and effective if signed by the mother and father and those signatures are notarized by a notary public authorized by the state in which the acknowledgment is signed. An acknowledgment may be signed any time during the child's lifetime.

(3) The mother and father shall be provided a copy of the completed acknowledgment at the time of signing.

History: 1996, Act 305, Eff. June 1, 1997.

722.1004 Acknowledgment as basis for court ordered child support, custody, or parenting time; relationship and status of child.

Sec. 4. An acknowledgment signed under this act establishes paternity, and the acknowledgment may be the basis for court ordered child support, custody, or parenting time without further adjudication under the paternity act, Act No. 205 of the Public Acts of 1956, being sections 722.711 to 722.730 of the Michigan Compiled Laws. The child who is the subject of the acknowledgment shall bear the same relationship to the mother and the man signing as the father as a child born or conceived during a marriage and shall have the identical status, rights, and duties of a child born in lawful wedlock effective from birth.

History: 1996, Act 305, Eff. June 1, 1997.

722.1005 Acknowledgment of parentage; filing with state registrar; review; maintenance as permanent record; review; procedures and payment for issuance; basis for preparation of new birth certificate.

Sec. 5. (1) A completed original acknowledgment of parentage shall be filed with the state registrar. Upon receipt of an acknowledgment, the state registrar shall review the form. If it appears to be properly completed and notarized, the state registrar shall file the acknowledgment in a parentage registry in the office of the state registrar. An acknowledgment filed with the state registrar shall be maintained as a permanent record in a manner consistent with section 2876 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.2876 of the Michigan Compiled Laws.

(2) The state registrar shall issue a copy of an acknowledgment filed in the parentage registry under the procedures and upon payment of the fee prescribed by section 2891 of Act No. 368 of the Public Acts of

1978, being section 333.2891 of the Michigan Compiled Laws.

(3) Upon filing, the completed acknowledgment form may serve as a basis for preparation of a new certificate of birth as provided in section 2831 of Act No. 368 of the Public Acts of 1978, being section 333.2831 of the Michigan Compiled Laws.

History: 1996, Act 305, Eff. June 1, 1997.

722.1006 Grant of initial custody.

Sec. 6. After a mother and father sign an acknowledgment of parentage, the mother has initial custody of the minor child, without prejudice to the determination of either parent's custodial rights, until otherwise determined by the court or otherwise agreed upon by the parties in writing and acknowledged by the court. This grant of initial custody to the mother shall not, by itself, affect the rights of either parent in a proceeding to seek a court order for custody or parenting time.

History: 1996, Act 305, Eff. June 1, 1997;—Am. 2006, Act 105, Imd. Eff. Apr. 7, 2006.

722.1007 Notices.

Sec. 7. The acknowledgment of parentage form shall include at least all of the following written notices to the parties:

- (a) The acknowledgment of parentage is a legal document.
- (b) Completion of the acknowledgment is voluntary.
- (c) The mother has initial custody of the child, without prejudice to the determination of either parent's custodial rights, until otherwise determined by the court or agreed by the parties in writing and acknowledged by the court. This grant of initial custody to the mother shall not, by itself, affect the rights of either parent in a proceeding to seek a court order for custody or parenting time.
- (d) Either parent may assert a claim in court for parenting time or custody.
- (e) The parents have a right to notice and a hearing regarding the adoption of the child.
- (f) Both parents have the responsibility to support the child and to comply with a court or administrative order for the child's support.
- (g) Notice that signing the acknowledgment waives the following:
 - (i) Blood or genetic tests to determine if the man is the biological father of the child.
 - (ii) Any right to an attorney, including the prosecuting attorney or an attorney appointed by the court in the case of indigency, to represent either party in a court action to determine if the man is the biological father of the child.
 - (iii) A trial to determine if the man is the biological father of the child.
- (h) That in order to revoke an acknowledgement of parentage, an individual must file a claim as provided under section 11.

History: 1996, Act 305, Eff. June 1, 1997;—Am. 2006, Act 105, Imd. Eff. Apr. 7, 2006.

722.1008 Acknowledgment of parentage; preparation or approval of form; availability to public.

Sec. 8. The state registrar shall prepare or approve the form used for acknowledgment of parentage. The form shall conform as closely as possible to section 7, federal requirements, and the needs of other appropriate state agencies. The state registrar shall make the form available to the public through the family independence agency, prosecuting attorneys, and hospitals as provided in section 21532 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.21532 of the Michigan Compiled Laws.

History: 1996, Act 305, Eff. June 1, 1997.

722.1009 Appointment of next friend or guardian ad litem; effect of signing by minor parent.

Sec. 9. In proceedings under this act, the court may appoint a next friend or guardian ad litem to represent a minor parent at the court's discretion. A minor parent may sign an acknowledgment of parentage with the same effect as if he or she were of legal age.

History: 1996, Act 305, Eff. June 1, 1997.

722.1010 Consent to court jurisdiction.

Sec. 10. Except as otherwise provided by law, a mother and father who sign an acknowledgment that is filed as prescribed by section 5 are consenting to the general, personal jurisdiction of the courts of record of this state regarding the issues of the support, custody, and parenting time of the child.

History: 1996, Act 305, Eff. June 1, 1997.

722.1011 Acknowledgment of parentage; claim for revocation.

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Sec. 11. (1) The mother or the man who signed the acknowledgment, the child who is the subject of the acknowledgment, or a prosecuting attorney may file a claim for revocation of an acknowledgment of parentage. If filed as an original action, the claim shall be filed in the circuit court of the county where either the mother or man resides. If neither of those parties lives in this state, the claim shall be filed in the county where the child resides. A claim for revocation may be filed as a motion in an existing action for child support, custody, or parenting time in the county where the action is and all provisions in this act apply as if it were an original action.

(2) A claim for revocation shall be supported by an affidavit signed by the claimant setting forth facts that constitute 1 of the following:

(a) Mistake of fact.

(b) Newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed.

(c) Fraud.

(d) Misrepresentation or misconduct.

(e) Duress in signing the acknowledgment.

(3) If the court finds that the affidavit is sufficient, the court may order blood or genetic tests at the expense of the claimant, or may take other action the court considers appropriate. The party filing the claim for revocation has the burden of proving, by clear and convincing evidence, that the man is not the father and that, considering the equities of the case, revocation of the acknowledgment is proper.

(4) A copy of the order of revocation shall be forwarded by the clerk of the court to the state registrar. The state registrar shall vacate the acknowledgment and may amend the birth certificate as prescribed by the order of revocation.

(5) Whether the claim for revocation under this act arises as an original action or as a motion in another action, the prosecuting attorney, an attorney appointed by the county, or an attorney appointed by the court is not required to represent either party regarding the claim for revocation.

History: 1996, Act 305, Eff. June 1, 1997.

722.1012 Validity of prior acknowledgment.

Sec. 12. This act does not affect the validity of an acknowledgment signed before the effective date of this act. The procedures for determination of a claim for revocation apply to all acknowledgments, including those signed before the effective date of this act.

History: 1996, Act 305, Eff. June 1, 1997.

722.1013 Effective date.

Sec. 13. This act shall take effect June 1, 1997.

History: 1996, Act 305, Eff. June 1, 1997.

CHILDREN'S PRODUCT SAFETY ACT

Act 219 of 2000

AN ACT to prohibit the use of certain unsafe children's products; to prohibit child care facilities from using or having on the facility premises certain unsafe children's products; to prescribe powers and duties of certain departments, officers, and agencies; to provide for the promulgation of rules to carry out the provisions of this act; and to prescribe penalties for violation of the provisions of this act.

History: 2000, Act 219, Imd. Eff. June 27, 2000.

The People of the State of Michigan enact:

722.1051 Short title.

Sec. 1. This act shall be known and may be cited as the "children's product safety act".

History: 2000, Act 219, Imd. Eff. June 27, 2000.

722.1052 Definitions.

Sec. 2. As used in this act:

- (a) "Child" means an individual less than 18 years old.
- (b) "Child care facility" means a child care center, child care organization, or child caring institution as defined in section 1 of 1973 PA 116, MCL 722.111.
- (c) "Children's product" means a product, including, but not limited to, a full-size crib, non-full-size crib, toddler bed, bed, car seat, chair, high chair, booster chair, hook-on chair, bath seat, gate or other enclosure for confining a child, play yard, stationary activity center, carrier, stroller, walker, or infant swing that is designed or intended to come into contact with the child while the product is used. Notwithstanding any other provision of this section, a product is not a "children's product" for purposes of this act if either of the following applies:
 - (i) It may be used by or for the care of a child under 6 years old, but it is designed or intended for use by the general population or segments of the general population and not solely or primarily for use by a child or for the care of a child.
 - (ii) It is a medication, drug, or food or is intended to be ingested.
- (d) "CPSC" means the consumer product safety commission created by the consumer product safety act, Public Law 92-573, 86 Stat. 1207.
- (e) "Commercial user" means a person who deals in children's products or who holds himself or herself out as having knowledge or skill relating to children's products, or a person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce children's products.
- (f) "Crib" means a bed or containment designed to accommodate an infant.
- (g) "Department" means the department of consumer and industry services.
- (h) "Full-size crib" means a full-size crib as defined in section 1508.3 of title 16 of the code of federal regulations regarding the requirements for full-size cribs.
- (i) "Non-full-size crib" means a non-full-size crib as defined in section 1509.2 of title 16 of the code of federal regulations regarding the requirements for non-full-size cribs.
- (j) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

History: 2000, Act 219, Imd. Eff. June 27, 2000.

722.1055 Unsafe children's product; placement in stream of commerce prohibited.

Sec. 5. A commercial user shall not remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, on or after January 1, 2001, an unsafe children's product.

History: 2000, Act 219, Imd. Eff. June 27, 2000.

722.1056 Unsafe children's product; criteria; crib; retrofit; notice; compliance.

Sec. 6. (1) A children's product is unsafe for purposes of this act if it meets 1 or more of the following criteria:

- (a) The children's product does not conform to all federal laws and regulations setting forth standards for the children's product.
- (b) The children's product has been recalled for any reason by a federal agency, the product's manufacturer, distributor, or importer; the recall has not been rescinded; and the children's product has been listed by the CPSC as a recalled product.

(c) A federal agency has issued a warning that a specific children's product's intended use constitutes a safety hazard and the warning has not been rescinded.

(2) For the purposes of this act, a crib is unsafe if it does not conform to the standards endorsed or established by the CPSC.

(3) An unsafe children's product, as determined under subsection (2), may be retrofitted if the retrofit has been approved by the federal agency issuing the recall or warning or the federal agency responsible for approving the retrofit if it is different from the federal agency issuing the recall or warning. A retrofitted children's product may be sold if it is accompanied at the time of sale by a notice declaring that it is safe to use. The notice shall include all of the following:

(a) A description of the original problem that made the recalled children's product unsafe.

(b) A description of the retrofit that explains how the original problem was eliminated and declaring that it is now safe to use.

(c) The name and address of the commercial user who accomplished the retrofit certifying that the work was done along with the name and model number of the product retrofitted. The commercial user is responsible for ensuring that the notice is present with the retrofitted product at the time of sale.

(4) A retrofit does not need to comply with this act if either of the following applies:

(a) The retrofit is for a children's product that requires assembly by the consumer, the approved retrofit is provided with the product by the commercial user, and the retrofit is accompanied at the time of sale by instructions explaining how to apply the retrofit.

(b) The seller of a previously unsold children's product accomplishes the repair prior to sale and the repair is approved or recommended by a federal agency.

History: 2000, Act 219, Imd. Eff. June 27, 2000.

722.1060 List of unsafe children's products; maintenance; availability; providing list to inspectors of child care facility and persons providing child care.

Sec. 10. (1) The department shall maintain a comprehensive list of children's products that have been identified as meeting any of the criteria set forth in sections 5 and 6. The department shall make the comprehensive list available to the public at no cost and shall post it on the internet and encourage links.

(2) The department shall provide a copy of the list of unsafe children's products to any individual required by the department to inspect a child care facility for the purpose of issuing or renewing a license or certificate of registration.

(3) The department may work with the family independence agency to provide a copy of the list of unsafe children's products to each person providing child care.

History: 2000, Act 219, Imd. Eff. June 27, 2000.

722.1061 Commercial user; sale of recalled product; exception.

Sec. 11. A commercial user is not in violation of this act if the specific recalled product sold was not on the department's list 30 days before the sale.

History: 2000, Act 219, Imd. Eff. June 27, 2000.

722.1065 Child care facility; prohibition; exception; notice; posting list; determination by operator of facility.

Sec. 15. (1) A child care facility may not use or have on the premises, on or after July 1, 2001, an unsafe children's product. This section does not apply to an antique or collectible children's product if it is not used by, or accessible to, a child in the child care facility.

(2) The department shall notify child care facilities, on an ongoing basis, of the provisions of this act and of unsafe children's products in plain, nontechnical language that enables each child care facility to effectively inspect children's products and identify unsafe children's products.

(3) The operator of a child care facility shall conspicuously post on the premises an updated copy of the list of recalled children's products provided by the department.

(4) The operator of a child care facility may use information provided by the CPSC to determine if a children's product is a recalled product for the purposes of this act.

History: 2000, Act 219, Imd. Eff. June 27, 2000.

722.1070 Revocation or refusal to renew or issue facility license or registration.

Sec. 20. The department may revoke or refuse to renew the license or certificate of registration of a child care facility or refuse to issue a license or certificate of registration if the licensee, registrant, or applicant does not comply with a section of this act.

History: 2000, Act 219, Imd. Eff. June 27, 2000.

722.1075 Violation by commercial user as misdemeanor; penalty.

Sec. 25. A commercial user who willfully and knowingly violates section 5 is guilty of a misdemeanor punishable by a fine of not more than \$100.00 or by imprisonment for not more than 90 days, or both.

History: 2000, Act 219, Imd. Eff. June 27, 2000.

722.1080 Enforcement action; jurisdiction.

Sec. 30. The attorney general or prosecuting attorney in the county in which a violation of this act occurred may bring an action in a court of competent jurisdiction to enforce the provisions of this act.

History: 2000, Act 219, Imd. Eff. June 27, 2000.

722.1085 Additional remedies.

Sec. 35. Remedies available under this act are in addition to any other remedies or procedures under any other provision of law that may be available to an aggrieved party.

History: 2000, Act 219, Imd. Eff. June 27, 2000.

UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT
Act 195 of 2001

AN ACT to adopt the uniform child-custody jurisdiction and enforcement act prescribing the powers and duties of the court in a child-custody proceeding involving this state and a proceeding or party outside of this state; and to repeal acts and parts of acts.

History: 2001, Act 195, Eff. Apr. 1, 2002.

The People of the State of Michigan enact:

ARTICLE 1
GENERAL PROVISIONS

722.1101 Short title.

Sec. 101. This act shall be known and may be cited as the “uniform child-custody jurisdiction and enforcement act”.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1102 Definitions.

Sec. 102. As used in this act:

- (a) “Abandoned” means left without provision for reasonable and necessary care or supervision.
- (b) “Child” means an individual who is younger than 18 years of age.
- (c) “Child-custody determination” means a judgment, decree, or other court order providing for legal custody, physical custody, or parenting time with respect to a child. Child-custody determination includes a permanent, temporary, initial, and modification order. Child-custody determination does not include an order relating to child support or other monetary obligation of an individual.
- (d) “Child-custody proceeding” means a proceeding in which legal custody, physical custody, or parenting time with respect to a child is an issue. Child-custody proceeding includes a proceeding for divorce, separate maintenance, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. Child-custody proceeding does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under article 3.
- (e) “Commencement” means the filing of the first pleading in a proceeding.
- (f) “Court” means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.
- (g) “Home state” means the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than 6 months of age, the term means the state in which the child lived from birth with a parent or person acting as a parent. A period of temporary absence of a parent or person acting as a parent is included as part of the period.
- (h) “Initial determination” means the first child-custody determination concerning a particular child.
- (i) “Issuing court” means the court that makes a child-custody determination for which enforcement is sought under this act.
- (j) “Issuing state” means the state in which a child-custody determination is made.
- (k) “Modification” means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous child-custody determination concerning the same child, whether or not it is made by the court that made the previous child-custody determination.
- (l) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.
- (m) “Person acting as a parent” means a person, other than a parent, who meets both of the following criteria:
 - (i) Has physical custody of the child or has had physical custody for a period of 6 consecutive months, including a temporary absence, within 1 year immediately before the commencement of a child-custody proceeding.
 - (ii) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.
- (n) “Physical custody” means the physical care and supervision of a child.
- (o) “Register” means to comply with the procedures of section 304 to make a child-custody determination

enforceable in this state.

(p) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or a territory or insular possession subject to the jurisdiction of the United States.

(q) "Tribe" means an Indian tribe or band, or Alaskan native village, that is recognized by federal law or formally acknowledged by a state.

(r) "Warrant" means a court order authorizing a law enforcement officer to take physical custody of a child.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1103 Scope of act; limitation.

Sec. 103. This act does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1104 Proceeding pertaining to Indian child.

Sec. 104. (1) A child-custody proceeding that pertains to an Indian child as defined in the Indian child welfare act of 1978, Public Law 95-608, 25 U.S.C. 1901 to 1903, 1911 to 1923, 1931 to 1934, 1951 to 1952, and 1961 to 1963, is not subject to this act to the extent that the proceeding is governed by the Indian child welfare act of 1978, Public Law 95-608, 25 U.S.C. 1901 to 1903, 1911 to 1923, 1931 to 1934, 1951 to 1952, and 1961 to 1963.

(2) A court of this state shall treat a tribe as a state of the United States for the purposes of articles 1 and 2.

(3) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under article 3.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1105 Child-custody law or determination of foreign country.

Sec. 105. (1) A court of this state shall treat a foreign country as a state of the United States for the purposes of applying articles 1 and 2.

(2) Except as otherwise provided in subsection (3), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under article 3.

(3) A court of this state need not apply this act if the child-custody law of a foreign country violates fundamental principles of human rights.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1106 Child-custody determination of this state.

Sec. 106. A child-custody determination made by a court of this state that had jurisdiction under this act binds all persons who have been served in accordance with the laws of this state or notified in accordance with section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the child-custody determination is conclusive as to all decided issues of law and fact except to the extent the child-custody determination is modified.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1107 Jurisdiction; question; priority.

Sec. 107. If a question of existence or exercise of jurisdiction under this act is raised in a child-custody proceeding, upon request of a party, the question must be given priority on the court calendar and handled expeditiously.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1108 Notice; manner; proof of service; notice not required.

Sec. 108. (1) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice, but may be by publication if other means are not effective.

(2) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(3) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1109 Personal jurisdiction.

Sec. 109. (1) A party to a child-custody proceeding who is not subject to personal jurisdiction in this state and is a responding party under article 2, a party in a proceeding to modify a child-custody determination under article 2, or a petitioner in a proceeding to enforce or register a child-custody determination under article 3 may appear and participate in the proceeding without submitting to personal jurisdiction over the party for another proceeding or purpose.

(2) A party is not subject to personal jurisdiction in this state solely by being physically present for the purpose of participating in a proceeding under this act. If a party is subject to personal jurisdiction in this state on a basis other than physical presence, the party may be served with process in this state. If a party present in this state is subject to the jurisdiction of another state, service of process allowable under the law of that state may be accomplished in this state.

(3) The immunity granted by subsection (1) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this act committed by an individual while present in this state.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1110 Communication between states; participation of parties; “record” defined.

Sec. 110. (1) A court of this state may communicate with a court in another state concerning a proceeding arising under this act.

(2) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, the parties shall be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(3) A communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of that communication.

(4) Except as provided in subsection (3), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(5) For the purposes of this section, “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. Record includes each of the following:

(a) Notes or transcripts of a court reporter who listened to a conference call between the courts.

(b) An electronic recording of a telephone call.

(c) A memorandum or electronic record of a communication between the courts.

(d) A memorandum or electronic record of a communication between the courts that a court makes after the communication.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1111 Testimony.

Sec. 111. (1) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(2) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for a deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1112 Request to out-of-state court; expenses; preserving and forwarding records.

Sec. 112. (1) A court of this state may request the appropriate court of another state to do any of the following:

(a) Hold an evidentiary hearing.

(b) Order a person to produce or give evidence under procedures of that state.

(c) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding.

(d) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the

evidence otherwise presented, and an evaluation prepared in compliance with the request.

(e) Order a party to a child-custody proceeding or a person having physical custody of the child to appear in the proceeding with or without the child.

(2) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (1).

(3) Travel and other necessary and reasonable expenses incurred under subsection (1) or (2) may be assessed against the parties according to the law of this state.

(4) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of these records.

History: 2001, Act 195, Eff. Apr. 1, 2002.

ARTICLE 2 JURISDICTION

722.1201 Initial child-custody determination; jurisdiction.

Sec. 201. (1) Except as otherwise provided in section 204, a court of this state has jurisdiction to make an initial child-custody determination only in the following situations:

(a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

(b) A court of another state does not have jurisdiction under subdivision (a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 207 or 208, and the court finds both of the following:

(i) The child and the child's parents, or the child and at least 1 parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

(ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

(c) All courts having jurisdiction under subdivision (a) or (b) have declined to exercise jurisdiction on the grounds that a court of this state is the more appropriate forum to determine the custody of the child under section 207 or 208.

(d) No court of another state would have jurisdiction under subdivision (a), (b), or (c).

(2) Subsection (1) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child-custody determination.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1202 Exclusive, continuing jurisdiction; condition; determination to decline jurisdiction; modification of child-custody determination.

Sec. 202. (1) Except as otherwise provided in section 204, a court of this state that has made a child-custody determination consistent with section 201 or 203 has exclusive, continuing jurisdiction over the child-custody determination until either of the following occurs:

(a) A court of this state determines that neither the child, nor the child and 1 parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships.

(b) A court of this state or a court of another state determines that neither the child, nor a parent of the child, nor a person acting as the child's parent presently resides in this state.

(2) A court of this state that has exclusive, continuing jurisdiction under this section may decline to exercise its jurisdiction if the court determines that it is an inconvenient forum under section 207.

(3) A court of this state that has made a child-custody determination and that does not have exclusive, continuing jurisdiction under this section may modify that child-custody determination only if it has jurisdiction to make an initial child-custody determination under section 201.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1203 Modification of out-of-state child-custody determination; requirements.

Sec. 203. Except as otherwise provided in section 204, a court of this state shall not modify a child-custody

determination made by a court of another state unless a court of this state has jurisdiction to make an initial child-custody determination under section 201(1)(a) or (b) and either of the following applies:

(a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 202 or that a court of this state would be a more convenient forum under section 207.

(b) A court of this state or a court of the other state determines that neither the child, nor a parent of the child, nor a person acting as a parent presently resides in the other state.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1204 Temporary emergency jurisdiction; communication with out-of-state court; duration of order.

Sec. 204. (1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(2) If there is no previous child-custody determination that is entitled to be enforced under this act and if a child-custody proceeding has not been commenced in a court of a state having jurisdiction under sections 201 to 203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 201 to 203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 201 to 203, a child-custody determination made under this section becomes a final child-custody determination, if that is what the determination provides and this state becomes the home state of the child.

(3) If there is a previous child-custody determination that is entitled to be enforced under this act or if a child-custody proceeding has been commenced in a court of a state having jurisdiction under sections 201 to 203, an order issued by a court of this state under this section must specify in the order a period of time that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 201 to 203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(4) If a court of this state that has been asked to make a child-custody determination under this section is informed that a child-custody proceeding has been commenced in, or that a child-custody determination has been made by, a court of a state having jurisdiction under sections 201 to 203, the court of this state shall immediately communicate with the other court. If a court of this state that is exercising jurisdiction under sections 201 to 203 is informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section, the court of this state shall immediately communicate with the court of the other state. The purpose of a communication under this subsection is to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1205 Notice and hearing.

Sec. 205. (1) Before a child-custody determination is made under this act, notice and an opportunity to be heard in accordance with the standards of section 108 must be given to each person entitled to notice under the law of this state as in child-custody proceedings between residents of this state, a parent whose parental rights have not been previously terminated, and a person having physical custody of the child.

(2) This act does not govern the enforceability of a child-custody determination made without notice and an opportunity to be heard.

(3) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this act are governed by the law of this state as in child-custody proceedings between residents of this state.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1206 Commencement of out-of-state proceeding; jurisdiction; communication; dismissal of proceeding by in-state court; modification.

Sec. 206. (1) Except as otherwise provided in section 204, a court of this state may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a child-custody proceeding has been commenced in a court of another state having jurisdiction substantially in conformity with this act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 207.

(2) Except as otherwise provided in section 204, before hearing a child-custody proceeding, a court of this state shall examine the court documents and other information supplied by the parties as required by section 209. If the court determines that, at the time of the commencement of the proceeding, a child-custody

proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the child-custody proceeding.

(3) In a proceeding to modify a child-custody determination, a court of this state shall determine whether a proceeding to enforce the child-custody determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may do any of the following:

(a) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement.

(b) Enjoin the parties from continuing with the proceeding for enforcement.

(c) Proceed with the modification under conditions it considers appropriate.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1207 Determination of inconvenient forum.

Sec. 207. (1) A court of this state that has jurisdiction under this act to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the motion of a party, the court's own motion, or the request of another court.

(2) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including all of the following:

(a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.

(b) The length of time the child has resided outside this state.

(c) The distance between the court in this state and the court in the state that would assume jurisdiction.

(d) The parties' relative financial circumstances.

(e) An agreement by the parties as to which state should assume jurisdiction.

(f) The nature and location of the evidence required to resolve the pending litigation, including the child's testimony.

(g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.

(h) The familiarity of the court of each state with the facts and issues of the pending litigation.

(3) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(4) A court of this state may decline to exercise jurisdiction under this act if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1208 Unjustifiable conduct of parties; decision to decline exercise of jurisdiction; dismissal or stay; expenses.

Sec. 208. (1) Except as otherwise provided in section 204 or by other law of this state, if a court of this state has jurisdiction under this act because a person invoking the court's jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless the court finds 1 or more of the following:

(a) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction.

(b) A court of the state otherwise having jurisdiction under sections 201 to 203 determines that this state is a more appropriate forum under section 207.

(c) No court of another state would have jurisdiction under sections 201 to 203.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1), the court may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under sections 201 to 203.

(3) If a court dismisses a petition or stays a proceeding because it declines to exercise jurisdiction under

subsection (1), it shall charge the party invoking the jurisdiction of the court with necessary and reasonable expenses including costs, communication expenses, attorney fees, investigative fees, witness expenses, travel expenses, and child care expenses during the course of the proceedings, unless the party from whom expenses and fees are sought establishes that the award would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this act.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1209 Pleading or sworn statement; information.

Sec. 209. (1) Subject to the law of this state providing for confidentiality of procedures, addresses, and other identifying information, in a child-custody proceeding, each party, in its first pleading or in an attached sworn statement, shall give information, if reasonably ascertainable, under oath as to the child's present address, the places where the child has lived during the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or sworn statement must state all of the following:

(a) Whether the party has participated, as a party or witness or in another capacity, in another child-custody proceeding with the child and, if so, identify the court, the case number of the child-custody proceeding, and the date of the child-custody determination, if any.

(b) Whether the party knows of a proceeding that could affect the current child-custody proceeding, including a proceeding for enforcement or a proceeding relating to domestic violence, a protective order, termination of parental rights, or adoption, and, if so, identify the court, the case number, and the nature of the proceeding.

(c) The name and address of each person that the party knows who is not a party to the child-custody proceeding and who has physical custody of the child or claims rights of legal custody or physical custody of, or parenting time with, the child.

(2) If the information required by subsection (1) is not furnished, upon motion of a party or its own motion, the court may stay the proceeding until the information is furnished.

(3) If the declaration as to an item described in subsection (1) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(4) Each party has a continuing duty to inform the court of a proceeding in this or another state that could affect the current child-custody proceeding.

(5) If a party alleges in a sworn statement or a pleading under oath that a party's or child's health, safety, or liberty would be put at risk by the disclosure of identifying information, the court shall seal and not disclose that information to the other party or the public unless the court orders the disclosure after a hearing in which the court considers the party's or child's health, safety, and liberty and determines that the disclosure is in the interest of justice.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1210 Order to appear with or without child.

Sec. 210. (1) A court of this state may order a party to a child-custody proceeding who is in this state to appear before the court personally with or without the child. The court may order a person who is in this state and who has physical custody or control of the child to appear physically with the child.

(2) If a party to a child-custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given in accordance with section 108 include a statement directing the party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to the party.

(3) The court may enter any orders necessary to ensure the safety of the child or of a person ordered to appear under this section.

(4) If a party to a child-custody proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party directed or desiring to appear and of the child.

History: 2001, Act 195, Eff. Apr. 1, 2002.

ARTICLE 3 ENFORCEMENT

722.1301 “Petitioner” and “respondent” defined.

Sec. 301. As used in this article:

(a) “Petitioner” means a person who seeks enforcement of a child-custody determination or enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction.

(b) “Respondent” means a person against whom a proceeding has been commenced for enforcement of a child-custody determination or enforcement of an order for the return of a child under the Hague convention on the civil aspects of international child abduction.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1302 Enforcement; temporary order.

Sec. 302. (1) This article may be invoked to enforce 1 or both of the following:

(a) A child-custody determination.

(b) An order for the return of a child made under the Hague convention on the civil aspects of international child abduction.

(2) A court of this state that does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing either of the following:

(a) A parenting time schedule made by a court of another state.

(b) The parenting time provisions of a child-custody determination of another state that does not provide for a specific parenting time schedule.

(3) If a court of this state makes an order under subsection (2)(b), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in article 2. The order remains in effect until an order is obtained from the other court or the period expires.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1303 Child custody determination by out-of-state court; enforcement; remedy.

Sec. 303. (1) A court of this state shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction that was in substantial conformity with this act or the child-custody determination was made under factual circumstances meeting the jurisdictional standards of this act and the child-custody determination has not been modified in accordance with this act.

(2) A court of this state may utilize a remedy available under another law of this state to enforce a child-custody determination made by a court of another state. The procedure provided by this article does not affect the availability of other remedies to enforce a child-custody determination.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1304 Registered child-custody determination; requirements.

Sec. 304. (1) A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending all of the following to the circuit court in this state:

(a) A letter or other document requesting registration.

(b) Two copies, including 1 certified copy, of the child-custody determination sought to be registered, and a statement under penalty of perjury that, to the best of the knowledge and belief of the person seeking registration, the child-custody determination has not been modified.

(c) Except as otherwise provided in section 209, the name and address of the person seeking registration and of each parent or person acting as a parent who has been awarded custody or parenting time in the child-custody determination sought to be registered.

(2) On receipt of the documents required by subsection (1), the registering court shall do both of the following:

(a) Cause the child-custody determination to be filed as a foreign judgment, together with 1 copy of any accompanying documents and information, regardless of form.

(b) Serve notice upon the persons named under subsection (1)(c) and provide them with an opportunity to contest the registration in accordance with this section.

(3) The notice required by subsection (2)(b) must state all of the following:

(a) A registered child-custody determination is enforceable as of the date of the registration in the same manner as a child-custody determination issued by a court of this state.

(b) A hearing to contest the validity of the registered child-custody determination must be requested within 21 days after service of notice.

(c) Failure to contest the registration will result in confirmation of the child-custody determination and

preclude further contest of that child-custody determination with respect to a matter that could have been asserted.

(4) A person seeking to contest the validity of a registered child-custody determination must request a hearing within 21 days after service of the notice under subsection (2). At that hearing, the court shall confirm the registered child-custody determination unless the person contesting registration establishes 1 of the following:

(a) The issuing court did not have jurisdiction under article 2.

(b) The child-custody determination sought to be registered has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article 2.

(c) The person contesting registration was entitled to notice in the proceedings before the court that issued the child-custody determination for which registration is sought, but notice of those proceedings was not given in accordance with the standards of section 108.

(5) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law, and the person requesting registration and each person served must be notified of the confirmation.

(6) Confirmation of a registered child-custody determination, whether by operation of law or after notice and hearing, precludes further contest of the child-custody determination with respect to a matter that could have been asserted at the time of registration.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1305 Registered child-custody determination; enforcement.

Sec. 305. (1) A court of this state may grant any relief normally available under the law of this state to enforce a registered child-custody determination made by a court of another state.

(2) A court of this state shall recognize and enforce, but shall not modify except in accordance with article 2, a registered child-custody determination of another state.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1306 Commencement of in-state enforcement proceeding; out-of-state modification proceeding; communication of enforcing court with modifying court.

Sec. 306. If a proceeding for enforcement under this article is commenced in this state and a court of this state determines that a proceeding to modify the child-custody determination has been commenced in another state having jurisdiction to modify the child-custody determination under article 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1307 Petition for enforcement of child-custody determination; contents; filing; hearing.

Sec. 307. (1) A petition under this article must be verified. A certified copy of a child-custody determination sought to be enforced and of the order confirming registration, if any, must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(2) A petition for enforcement of a child-custody determination must state all of the following:

(a) Whether the court that issued the child-custody determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was.

(b) Whether the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this act or federal law and, if so, identify the court, the case number of the proceeding, and the action taken.

(c) Whether a proceeding has been commenced that could affect the current proceeding, including a proceeding relating to domestic violence, a protective order, termination of parental rights, or adoption and, if so, identify the court and the case number and nature of the proceeding.

(d) The present physical address of the child and the respondent, if known.

(e) Whether relief in addition to the immediate physical custody of the child and attorney fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought.

(f) If the child-custody determination has been registered and confirmed under section 304, the date and place of registration.

(3) Upon the filing of a petition under this article, the court shall issue an order directing the respondent to appear with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The court shall hold the hearing on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The

court may extend the date of hearing at the request of the petitioner.

(4) An order issued under subsection (3) must state the time and place of the hearing and must advise the respondent that at the hearing the court will order the delivery of the child and the payment of fees, costs, and expenses under section 311, and may schedule an additional hearing to determine whether further relief is appropriate, unless the respondent appears and establishes either of the following:

(a) The child-custody determination has not been registered and confirmed under section 304 and 1 or more of the following:

(i) The issuing court did not have jurisdiction under article 2.

(ii) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article 2 or federal law.

(iii) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 108 in the proceedings before the court that issued the order for which enforcement is sought.

(b) The child-custody determination for which enforcement is sought was registered and confirmed under section 304, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article 2 or federal law.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1308 Petition and order; service.

Sec. 308. Except as otherwise provided in section 310, the petition and order must be served, by a method authorized by the law of this state, upon respondent and any person who has physical custody of the child.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1309 Delivery of child to petitioner; grounds for exception; expenses; additional relief; refusal to testify; inference; privilege against disclosure.

Sec. 309. (1) Unless the court issues a temporary emergency order as provided in section 204, upon a finding that a petitioner is immediately entitled to the physical custody of the child, the court shall order the child delivered to the petitioner unless the respondent establishes either of the following:

(a) The child-custody determination has not been registered and confirmed under section 304 and 1 or more of the following:

(i) The issuing court did not have jurisdiction under article 2.

(ii) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article 2 or federal law.

(iii) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 108 in the proceedings before the court that issued the order for which enforcement is sought.

(b) The child-custody determination for which enforcement is sought was registered and confirmed under section 304, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article 2 or federal law.

(2) The court shall award the fees, costs, and expenses authorized under section 311 and may grant additional relief, including a request for the assistance of law enforcement officials, and schedule a further hearing to determine whether additional relief is appropriate.

(3) If a party called to testify refuses to answer on the grounds that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(4) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child cannot be invoked in a proceeding under this article.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1310 Warrant to take physical custody of child.

Sec. 310. (1) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is likely to suffer serious imminent physical harm or be removed from this state.

(2) If the court, upon the testimony of the petitioner or other witness, finds that the child is likely to suffer serious imminent physical harm or be imminently removed from this state, the court may issue a warrant to take physical custody of the child. The court shall hold a hearing on the petition on the next judicial day after the warrant is executed. A warrant issued under this section must include the statements required in an enforcement petition by section 307.

(3) A warrant to take physical custody of a child must include at least the following:

(a) A recitation of the facts upon which a conclusion of serious imminent physical harm or imminent removal from the jurisdiction is based.

- (b) An order directing law enforcement officers to take physical custody of the child immediately.
- (c) Provisions for the placement of the child pending final relief.
- (4) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.
- (5) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or another witness that a less intrusive remedy is not effective, the court may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law enforcement officers to make a forcible entry at any hour.
- (6) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1311 Assessment of expenses.

Sec. 311. (1) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, witness expenses, travel expenses, and child care expenses during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(2) The court shall not assess fees, costs, or expenses against a state except as otherwise provided by law other than this act.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1312 Full faith and credit.

Sec. 312. A court of this state shall accord full faith and credit to an order issued by another state and consistent with this act that enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under article 2.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1313 Appeal.

Sec. 313. An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1314 International child abduction; actions by prosecutor or attorney general.

Sec. 314. (1) In a case arising under this act or involving the Hague convention on the civil aspects of international child abduction, a prosecutor or the attorney general may take any lawful action, including resort to a proceeding under this article or another available civil proceeding, to locate a child, obtain the return of a child, or enforce a child-custody determination if there is 1 or more of the following:

- (a) An existing child-custody determination.
- (b) A request from a court in a pending child-custody proceeding.
- (c) A reasonable belief that a criminal statute has been violated.
- (d) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague convention on the civil aspects of international child abduction.

(2) A prosecutor or the attorney general acting under this section acts on behalf of the court and shall not represent a party to a child-custody determination.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1315 Actions by law enforcement officer.

Sec. 315. At the request of a prosecutor or the attorney general acting under section 314, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and to assist the prosecutor or attorney general with responsibilities under section 314.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1316 Expenses of prosecutor or attorney general and law enforcement officers; assessment against respondent.

Sec. 316. If the respondent is not the prevailing party, the court may assess against the respondent all direct

expenses and costs incurred by the prosecutor or attorney general and law enforcement officers under section 314 or 315.

History: 2001, Act 195, Eff. Apr. 1, 2002.

ARTICLE 4 MISCELLANEOUS

722.1401 Application and construction of act; promotion of uniformity.

Sec. 401. In applying and construing this uniform act, the court shall give consideration to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1405 Proceedings commenced before effective date of act.

Sec. 405. A motion or other request for relief made in a child-custody or enforcement proceeding that was commenced before the effective date of this act is governed by the law in effect at the time the motion or other request was made.

History: 2001, Act 195, Eff. Apr. 1, 2002.

722.1406 Repeal of MCL 600.651 to 600.673; effective date of act.

Sec. 406. (1) Sections 651 to 673 of the revised judiciary act of 1961, 1961 PA 236, MCL 600.651 to 600.673, are repealed.

(2) This act takes effect April 1, 2002.

History: 2001, Act 195, Eff. Apr. 1, 2002.